No. 95-1455-ATX Title: Janet Reno, Attorney General, Appellant
v.
Bossier Parish School Board, et al.

Docketed:
March 12, 1996

Court: United States District Court
for the District of Columbia

Vide:
95-1508

Entry	Date	Proceedings and Orders
	Feb 20 1996	Application (A95-684) to extend the time to file a jurisdictional statement on appeal from February 25, 1996 to March 11, 1996, submitted to The Chief Justice.
	Feb 22 1996	Application (A95-684) granted by the Chief Justice extending the time to file until March 11, 1996.
	Mar 11 1996	Statement as to jurisdiction filed. (Response due April 11, 1996)
	Mar 11 1996	Appendix of appellant filed.
	Mar 15 1996	Motion of appellee to supplement the record filed.
	Mar 29 1996	Opposition of Janet Reno, Attorney General to motion of appellee filed.
	Apr 1 1996	Opposition of George Price, et al. to motion of appellee filed.
	Apr 4 1996	Reply to oppositions filed.
	Apr 8 1996	Motion of appellee Bossier Parish School Board to dismiss or affirm filed. VIDED.
	Apr 22 1996	Motion of appellee to supplement the record DENIED.
	Apr 24 1996	DISTRIBUTED. May 10, 1996
	May 7 1996	Reply brief of appellant Janet Reno, Attorney General filed.
	May 13 1996	REDISTRIBUTED. May 17, 1996
	May 20 1996	REDISTRIBUTED. May 24, 1996
	May 28 1996	REDISTRIBUTED. May 31, 1996
	Jun 3 1996	PROBABLE JURISDICTION NOTED. SET FOR ARGUMENT December 9, 1996. **********
	Jun 26 1996	Order extending time to file brief of appellant on the merits until August 1, 1996.
	Aug 1 1996	Brief of appellant Janet Reno, Attorney General filed. VIDED.
	Aug 1 1996	Brief of appellants George Price, et al. filed. VIDED.
	Aug 1 1996	Brief amici curiae of American Civil Liberties Union, et al. filed. VIDED.
	Aug 1 1996	Joint appendix filed. VIDED.
	Aug 2 1996	Order extending time to file brief of appellee on the merits until September 17, 1996.
	Aug 12 1996	Record filed.
	Aug 15 1996	Brief of Pacific Legal Foundation filed. VIDED.
	Sep 17 1996	Brief of appellee Bossier Parish School Board filed. VIDED.
	Oct 2 1996	Motion of the Acting Solicitor General for divided argument filed.
	Oct 21 1996	Motion of the Acting Solicitor General for divided argument GRANTED.
	Oct 21 1996	Reply brief of the Federal Appellant filed. VIDED.

2pp

No. 95-1455-ATX

Entry	Date	Proceedings and Orders
	Oct 21 1996	Reply brief of appellants George Price, et al. filed. VIDED.
	Oct 29 1996	CIRCULATED.
	Dec 9 1996	ARGUED.

Supreme Court, U.S.
FILED

No. 95 1455 MAR 11 1996

OFFICE OF THE CLERK

In the Supreme Court of the United States

OCTOBER TERM, 1995

JANET RENO, ATTORNEY GENERAL OF THE UNITED STATES, APPELLANT

v.

BOSSIER PARISH SCHOOL BOARD

ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF COLUMBIA

JURISDICTIONAL STATEMENT

DREW S. DAYS, III
Solicitor General

DEVAL L. PATRICK
Assistant Attorney General

PAUL BENDER
Deputy Solicitor General

CORNELIA T.L. PILLARD
Assistant to the Solicitor General

DAVID K. FLYNN
EILEEN PENNER
Attorneys

Department of Justice
Washington, D.C. 20530
(202) 514-2217

54 pp

QUESTIONS PRESENTED

1. Whether a district court assessing a covered jurisdiction's purpose under Section 5 of the Voting Rights Act of 1965, 42 U.S.C. 1973c, may disregard factors this Court has held are relevant to proof of discriminatory purpose on the ground that such evidence is also relevant to show vote dilution under Section 2, 42 U.S.C. 1973.

2. Whether the district court clearly erred in finding no discriminatory purpose on the basis of the factors it considered in this case.

3. Whether a voting change that clearly violates Section 2 of the Voting Rights Act is entitled to preclearance under Section 5 of the Act.

TABLE OF CONTENTS

	Page
Opinion below	1
Jurisdiction	1
Statutory and regulatory provisions involved	1
Statement	2
The questions presented are substantial	13
Conclusion	28

TABLE OF AUTHORITIES

Cases:

Arizona v. *Reno*, 887 F. Supp. 318 (D.D.C. 1995), appeal dismissed, No. 95-299 (Mar. 1, 1996)	18
Beer v. *United States*, 425 U.S. 130 (1976)	2, 24
Bob Jones Univ. v. *United States*, 461 U.S. 574 (1983)	26
Brown v. *Board of Educ.*, 347 U.S. 483 (1954)	7
Busbee v. *Smith*, 549 F. Supp. 494 (D.D.C. 1982), aff'd, 459 U.S. 1166 (1983)	15
Chisom v. *Roemer*, 501 U.S. 380 (1991)	25
City of Lockhart v. *United States*, 460 U.S. 125 (1983)	2
City of Mobile v. *Bolden*, 446 U.S. 55 (1980)	3, 13, 15, 25
City of Pleasant Grove v. *United States*:	
568 F. Supp. 1455 (D.D.C. 1983)	15
479 U.S. 462 (1987)	15, 22
City of Port Arthur v. *United States*, 517 F. Supp. 987 (D.D.C. 1981), aff'd, 459 U.S. 159 (1982)	15, 17
City of Rome v. *United States*, 446 U.S. 156 (1980)	2
Columbus Bd. of Educ. v. *Penick*, 443 U.S. 449 (1979)	17

Cases—Continued: Page

EEOC v. *Ethan Allen, Inc.*, 44 F.3d 116 (2d Cir. 1994) 22
Lemon v. *Bossier Parish School Bd.*, 240 F. Supp. 709 (W.D. La. 1965), aff'd, 370 F.2d 847 (5th Cir.), cert. denied, 388 U.S. 911 (1967) 7
Louisiana v. *United States*, 380 U.S. 145 (1965) 7
Major v. *Treen*, 574 F. Supp. 325 (E.D. La. 1983) 7
Miller v. *Johnson*, 115 S. Ct. 2475 (1995) 2, 18, 19
Personnel Administrator v. *Feeney*, 442 U.S. 256 (1979) 16, 17
Pullman-Standard v. *Swint*, 456 U.S. 273 (1982) 16, 19
Rogers v. *Lodge*, 458 U.S. 613 (1982) 13, 15, 16, 17
St. Mary's Honor Center v. *Hicks*, 113 S. Ct. 2742 (1993) 22
Shaw v. *Reno*, 113 S. Ct. 2816 (1993) 22
South Carolina v. *Katzenbach*, 383 U.S. 301 (1966) 14
Southwest Merchandising Corp. v. *NLRB*, 53 F.3d 1334 (D.C. Cir. 1995) 22
Thornburg v. *Gingles*, 478 U.S. 30 (1986) 3, 24, 25
Village of Arlington Heights v. *Metropolitan Housing Dev. Corp.*, 429 U.S. 252 (1977) 13, 14, 15, 16, 17, 21
Washington v. *Davis*, 426 U.S. 229 (1976) 16
White v. *Regester*, 412 U.S. 755 (1973) 25

Constitution, statutes and regulations:

U.S. Const.:
Amend. XIII 6
Amend. XIV (Equal Protection Clause) 3
Voting Rights Act Amendments of 1982, Pub. L. No. 97-205, § 3, 96 Stat. 134 3
Voting Rights Act of 1965, 42 U.S.C. 1973 *et seq.*:
§ 2, 42 U.S.C. 1973 ..... *passim*
§ 2(a), 42 U.S.C. 1973(a) 3, 25
§ 2(b), 42 U.S.C. 1973(b) 3, 25
§ 4, 42 U.S.C. 1973b 2, 3
§ 4(a)(8), 42 U.S.C. 1973b(a)(8) 25
§ 5, 42 U.S.C. 1973c ..... *passim*

Statutes and regulations—Continued: Page

42 U.S.C. 1971(c) 14
28 C.F.R. Pt. 51 4
Section 51.2 2
Section 51.13(e) 2
Section 51.54(a) 4
Section 51.55(a) 4
Section 51.55(b)(2) 2, 5, 12, 14, 23, 25
Section 51.56(c)(1) 4, 26
Sections 51.57-51.61 3
Section 51.58(b)(1) 3
Section 51.58(b)(4) 3
App. 3

Miscellaneous:

50 Fed. Reg. (1985):
p. 19,122 ..... 3, 4, 26
p. 19,131 ..... 4, 26
Proposed Changes to Regulations Governing Section 5 of the Voting Rights Act: Oversight Hearings Before the Subcomm. on Civil and Constitutional Rights of the House Comm. on the Judiciary, 99th Cong., 1st Sess. (1985) 26
S. Rep. No. 417, 97th Cong., 2d Sess. (1982) 3, 4, 23, 24, 25
Subcommittee on Civil and Constitutional Rights of the House Comm. on the Judiciary, 99th Cong., 2d Sess., *Voting Rights Act: Proposed Section 5 Regulations* (Comm. Print 1986 Ser. No. 9) 4

In the Supreme Court of the United States

OCTOBER TERM, 1995

No.

JANET RENO, ATTORNEY GENERAL OF THE UNITED STATES, APPELLANT

v.

BOSSIER PARISH SCHOOL BOARD

ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF COLUMBIA

JURISDICTIONAL STATEMENT

OPINION BELOW

The opinion of the three-judge district court (App. 1a-65a) is reported at 907 F. Supp. 434.

JURISDICTION

The judgment of the three-judge district court was entered on November 2, 1995. A notice of appeal was filed on December 27, 1995. App. 163a-164a. On February 22, 1996, the Chief Justice extended the time within which to file a jurisdictional statement to and including March 11, 1996. The jurisdiction of this Court is invoked under 28 U.S.C. 1253 and 42 U.S.C. 1973c.

STATUTORY AND REGULATORY PROVISIONS INVOLVED

The relevant statutory provisions are Sections 2 and 5 of the Voting Rights Act of 1965, 42 U.S.C. 1973, 1973c,

which are reproduced in an appendix to this jurisdictional statement. App. 165a-167a. This case also involves a provision of the Procedures for the Administration of Section 5, 28 C.F.R. 51.55(b)(2), which is reproduced in the appendix. App. 168a.

STATEMENT

1. Congress enacted the Voting Rights Act of 1965 in order to eliminate discrimination in voting. Section 5 of the Act, 42 U.S.C. 1973c, provides that a covered jurisdiction may not implement any change in election practices unless it has first obtained a declaratory judgment from the United States District Court for the District of Columbia that the change "does not have the purpose and will not have the effect of denying or abridging the right to vote on account of race or color." Alternatively, the change may be enforced if, within 60 days after its submission to her, the Attorney General has interposed no objection to it. A covered jurisdiction seeking preclearance of a voting change under Section 5 must show both (1) an absence of discriminatory purpose in the adoption of the change, and (2) that the change will not have a discriminatory effect. *City of Rome* v. *United States*, 446 U.S. 156, 172-173 (1980).[1] There is no dispute that the Bossier Parish School Board redistricting plan involved in this case is a change in an election practice covered by Section 5. See App. 140a-141a (¶¶ 249, 251).[2]

[1] This Court has interpreted the discriminatory effect standard in Section 5 to require a showing of non-retrogression, *i.e.*, that the proposed change will not diminish the ability of members of racial minorities to elect representatives of their choice. *Miller* v. *Johnson*, 115 S. Ct. 2475, 2483 (1995); *City of Lockhart* v. *United States*, 460 U.S. 125, 134 (1983); *Beer* v. *United States*, 425 U.S. 130, 141 (1976).

[2] Covered changes include redistricting. *Miller*, 115 S. Ct. at 2483; 28 C.F.R. 51.2, 51.13(e). The State of Louisiana, and all of its political subdivisions, are covered jurisdictions under Section 4 of the Act, 42 U.S.C. 1973b, and are therefore subject to the preclearance requirements of Section 5. See 28 C.F.R. Pt. 51, App.

The Department of Justice regulations establishing procedures for the administration of Section 5 set forth relevant factors to guide the Attorney General's determinations under Section 5. See generally 28 C.F.R. 51.57-51.61. Those factors include, *inter alia*, "[t]he extent to which minorities have been denied an equal opportunity to participate meaningfully in the political process in the jurisdiction," 28 C.F.R. 51.58(b)(1), and the extent to which "present or past discrimination" affected "the voter registration and election participation of minority voters," 28 C.F.R. 51.58(b)(4). Those provisions are designed to "follow[] the law as interpreted by the Supreme Court of the United States and other courts." 50 Fed. Reg. 19,122 (1985).

Section 2 of the Act, as amended in 1982, 42 U.S.C. 1973, prohibits any voting practice "which results in a denial or abridgement of the right of any citizen of the United States to vote on account of race or color," 42 U.S.C. 1973(a). A Section 2 plaintiff may challenge a voting practice on the ground that it has the discriminatory effect of denying minority citizens an equal opportunity to participate in the electoral process and to elect representatives of their choice; no discriminatory purpose on the part of the challenged jurisdiction need be shown. 42 U.S.C. 1973(b).[3]

When the Voting Rights Act was amended in 1982, the Senate Judiciary Committee Report stated that a vio-

[3] Section 2 was amended in 1982, Pub. L. No. 97-205, § 3, 96 Stat. 134, in response to *City of Mobile* v. *Bolden*, 446 U.S. 55 (1980), which had held that a violation of either Section 2 or the Equal Protection Clause required a showing of discriminatory purpose in the adoption or maintenance of the contested electoral practice. The 1982 amendment made clear that no showing of discriminatory purpose is required under Section 2. S. Rep. No. 417, 97th Cong., 2d Sess. 15-16, 22 (1982); *Thornburg* v. *Gingles*, 478 U.S. 30, 35 (1986).

lation of amended Section 2 should prevent preclearance under Section 5: "In light of the amendment to section 2, it is intended that a section 5 objection also follow if a new voting procedure itself so discriminates as to violate section 2." S. Rep. No. 417, 97th Cong., 2d Sess. 12 n.31 (1982).

In 1985, the Department of Justice drafted a regulation requiring denial of preclearance under Section 5 to voting changes that violate Section 2. 50 Fed. Reg. 19,122, 19,131. That proposed regulation (proposed 28 C.F.R. 51.56(c)(1)) stated that the Attorney General would object under Section 5 "based upon violation of Section 2." Congress then initiated oversight hearings to decide, *inter alia*, whether the 1982 amendments "supported the incorporation of Section 2 standards into Section 5." Subcommittee on Civil and Constitutional Rights of the House Comm. on the Judiciary, 99th Cong., 2d Sess., *Voting Rights Act: Proposed Section 5 Regulations* 1 (Comm. Print 1986 Ser. No. 9) [hereinafter *Comm. Print*]. Following the oversight hearings, the Subcommittee approved the Department's interpretation of Section 5:

> [T]he Subcommittee concludes that it is a proper interpretation of the legislative history of the 1982 amendments to use Section 2 standards in the course of making Section 5 determinations.

Comm. Print 5.

In 1987, the Department of Justice adopted the regulation in essentially the form in which it had been proposed, with the modification that the Attorney General's denial of preclearance should be based only on a "clear" violation of Section 2. The regulations establishing procedures for the administration of Section 5, 28 C.F.R. Pt. 51, thus provide that a change may not be precleared, not only if it was adopted with a discriminatory purpose or if it would have a retrogressive effect, 28 C.F.R. 51.54(a), 51.55(a), but also if "a bar to implementation

of the change is necessary to prevent a clear violation of amended section 2." 28 C.F.R. 51.55(b)(2).

2. a. This case involves preclearance of the redistricting plan for the Bossier Parish School Board (Board). The 12-member Board governs the Bossier Parish School District, which is coterminous with Bossier Parish. App. 3a-4a. The Board is elected from single-member districts for four-year concurrent terms. A majority-vote requirement applies to elections of Board members. *Id.* at 4a. The Board redistricted following the 1990 census to eliminate population malapportionment among its existing districts.

In 1990, blacks comprised 20.1% of the total population of Bossier Parish, and 17.6% of the voting age population. App. 2a. As of 1994, blacks comprised 15.5% of Bossier Parish's registered voters. *Ibid.* The black population of the parish is concentrated in two areas: More than 50% of the black residents live in Bossier City, *id.* at 68a (¶ 10), and the remaining black population is concentrated in the northern rural portion of the parish, *id.* at 2a, 68a (¶ 10). The parties have stipulated to facts showing that voting in the parish is racially polarized, *id.* at 40a, 122a-127a (¶¶ 181-196), and that "voting patterns in Bossier Parish are affected by racial preferences," *id.* at 122a (¶ 181).

No black person has ever been elected to the Board. App. 4a, 115a (¶ 153). Despite the facts that the Board has 12 members, blacks comprise one-fifth of the parish population, and the parish's black population is concentrated in two areas, the Board's 1992 redistricting plan includes no majority-black districts. *Id.* at 8a, 68a (¶ 11), 102a (¶ 109). The Board adopted that plan even though it has admitted that it was "obvious" during the redistricting process "that a reasonably compact black-majority district could be drawn within Bossier City." *Id.* at 76a (¶ 36). The outlines of a second, reasonably compact majority-black district in the rural, northern area

of the parish were also "readily discernible" from information then before the Board. *Id.* at 114a (¶ 148).

Black voters historically have been unable to elect candidates of their choice to other political positions in Bossier Parish. App. 118a-127a (¶¶ 153-196). Of the 14 elections in the parish since 1980 in which a black candidate has run against a white candidate in a single-member district or for mayor, only two black candidates have won. *Id.* at 127a (¶ 196). One was a candidate for the Bossier Parish Police Jury,[4] and the other for the Bossier City Council. *Ibid.* The black Police Juror won in Police Jury District 10, which contained a United States Air Force base, *id.* at 117a (¶¶ 160-161), and the black City Council member won in a city council district that substantially overlapped Police Jury District 10, and also included the Air Force base, *id.* at 120a (¶ 172). The district court found that the base is a factor unique to those districts that increased the ability of black voters in that area to elect representatives of their choice. *Id.* at 2a n.1.[5]

Bossier Parish and its School Board have a history of racial discrimination beginning before the Civil War and continuing to the present. See generally App. 42a-46a.

[4] The Policy Jury is the governing body for the parish. See page 8, *infra*.

[5] Many residents in and around the base do not vote in local elections, App. 117a-118a (¶¶ 160-163); that factor, together with the tendency of Air Force retirees who settle in the area to vote in a less racially polarized way than other Bossier Parish residents, increases the ability of black voters in the districts containing the Air Force base to elect representatives of their choice. *Id.* at 117a-118a (¶¶ 162-163), 127a (¶ 196). In the reconfigured plan adopted by the Police Jury in 1991 and the City Council in 1993, the Air Force base no longer has that effect. *Id.* at 2a n.1. The black incumbent Police Juror was reelected in 1991 in the redrawn district in an election in which he ran unopposed. *Ibid.* The black incumbent city council member ran against a white opponent and lost. *Id.* at 120a (¶ 173).

130a-140a (¶¶ 214-248).[6] De jure segregation prevailed in Louisiana's schools long after *Brown* v. *Board of Educ.*, 347 U.S. 483 (1954). App. 136a (¶ 235). The Board has repeatedly sought to evade its desegregation obligations. *Id.* at 136a-137a (¶¶ 237-239). It remains under court order to remedy the vestiges of discrimination in its school system. See *Lemon* v. *Bossier Parish School Bd.*, 240 F. Supp. 709 (W.D. La. 1965), aff'd, 370 F.2d 847 (5th Cir.), cert. denied, 388 U.S. 911 (1967). Since 1980, the schools in Bossier Parish have become increasingly segregated by race. *Id.* at 137a-138a (¶¶ 240-242). The Board has nevertheless violated the *Lemon* court's order that it maintain a biracial committee to improve education and recommend ways to attain and maintain a unitary school system. *Id.* at 103a-104a (¶¶ 111-112).[7] The effects of past discrimination continue today:

[6] Many decades of discriminatory government action in Louisiana resulted in the large-scale disenfranchisement of black voters. Following the passage of the Thirteenth Amendment, Louisiana enacted laws intended to reduce black voting; black registration decreased by 90% within a few years. App. 130a-131a (¶¶ 215-219). In 1921, an amendment to the State Constitution required persons seeking to register to vote to "give a reasonable interpretation" of a constitutional provision. *Id.* at 132a (¶ 221). That amendment, which disenfranchised most black citizens, was not invalidated until 1965. *Louisiana* v. *United States*, 380 U.S. 145 (1965). After an all-white Louisiana Democratic primary was invalidated, the party adopted an anti-single-shot law and a majority-vote requirement for party office. App. 132a (¶ 222); *Major* v. *Treen*, 574 F. Supp. 325, 341 (E.D. La. 1983).

[7] The biracial committee met in 1976, when it was first convened, but only the black members attended the few meetings that were held, and the committee was then discontinued. App. 103a-104a (¶¶ 111-112). A similar committee was formed in 1993, shortly after the School Board submitted its redistricting plan to the Justice Department for Section 5 review. The Board promptly disbanded that committee also because, according to the School Board President, the minority members of the committee "quickly turned toward becoming involved in policy." *Id.* at 104a-105a (¶¶ 113-116).

"Black citizens of Bossier Parish suffer a markedly lower socioeconomic status than their white counterparts" that is "traceable to a legacy of racial discrimination affecting Bossier Parish's black citizens." *Id.* at 128a (¶ 200); see generally *id.* at 127a-130a (¶¶ 197-213). This "makes it harder for blacks to obtain necessary electoral information, organize, raise funds, campaign, register, and turn out to vote, and this in turn causes a depressed level of political participation for black persons within Bossier Parish." *Id.* at 130a (¶ 213).

b. Following the 1990 census, redistricting efforts by the Bossier Parish Police Jury preceded the School Board redistricting. The Police Jury, like the School Board, consists of 12 members, who are elected from single-member districts in the same manner as the Board. App. 2a. The Police Jury has never had a districting plan that contained any majority-black districts, *ibid.*, and the plan the Police Jury adopted in April, 1991, also contains none, *id.* at 3a, 68a (¶ 11).

During the 1990-1991 redistricting process, the white Police Jurors and their demographer knew, just as the School Board knew during its subsequent redistricting process, that it was feasible to create two reasonably compact majority-black districts in the parish. App. 76a (¶ 36), 82a-83a (¶ 53), 114a (¶ 148). Police Jurors nonetheless told citizens who advocated creating majority-black districts that it was impossible to create such districts because the black population was too dispersed. *Id.* at 3a, 83a (¶ 54); see also *id.* at 82a (¶ 52).

On May 28, 1991, the Police Jury submitted its redistricting plan to the Attorney General seeking preclearance under Section 5. The Police Jury did not provide the Attorney General with the information that showed that reasonably compact majority-black districts could be created. App. 68a-69a (¶ 11). On July 29, based on the information submitted, the Attorney General precleared the redistricting plan for the Police Jury elections. *Id.* at 3a, 68a-69a (¶ 11).

c. The School Board began its own redistricting process in early 1991. App. 4a. With its next election not scheduled to occur until October, 1994, the Board proceeded without urgency. *Id.* at 4a, 93a (¶ 83). The Board initially chose not to use the districts in the 1991 Police Jury plan, but to develop a separate plan for the Board. *Id.* at 4a, 28a, 47a, 94a (¶ 87). Although the Board and the Police Jury have jurisdiction over the same geographic area, are the same size, and both use 12 single-member districts, the bodies serve different functions and for at least a decade have maintained different electoral districts. *Id.* at 3a-4a & n.3, 72a-73a (¶¶ 24, 26). Schools are unevenly distributed in the Police Jury districts, with some districts containing no schools and others containing several, and Police Jury district lines do not correspond with school attendance zones. *Id.* at 8a, 72a-73a (¶ 24), 112a (¶ 141). Board members also did not like the 1991 Police Jury plan because it would pit Board incumbents against each other in two districts. *Id.* at 8a. The Board hired the Police Jury's demographer to develop a new redistricting plan for the Board, estimating that he would spend 200 to 250 hours on the project. *Id.* at 92a (¶ 80), 94a (¶ 86). The demographer met privately with Board members and showed them various computer-generated alternative districts. *Id.* at 97a (¶ 96).

Beginning in March, 1992, representatives of local black community groups (including defendant-intervenor George Price, president of the NAACP local chapter) requested that representatives of the black community be included in the Board's redistricting process. The Board failed to respond to those requests. App. 5a, 96a-98a (¶¶ 93-94, 97). Some Board members privately stated that the Board was "hostile to black representation on the School Board." *Id.* at 30a-32a, 53a-54a. In August, 1992, with no other plan publicly on the table, Price presented a plan for two majority-black districts that had been developed by the NAACP. *Id.* at 6a, 96a-97a (¶ 95), 98a (¶¶ 98-99).

Price was told that the Board would not consider a plan that did not also draw the other ten districts. *Id.* at 6a, 98a (¶ 99).

At the September 3, 1992, Board meeting, Price presented an NAACP plan depicting all 12 districts, but the Board refused to consider it, ostensibly because "the plan's district lines crossed existing precinct lines, and therefore violated state law." App. 99a (¶ 102); *id* at 6a.[8] The Board knew at the time, however, that it was legal and feasible to draw districts across existing precinct lines.[9] Indeed, in considering creating a new plan, the Board itself had anticipated the necessity of splitting precincts. *Id.* at 29a, 95a (¶ 89).

The Board did not ask its demographer to explore the possibility of alleviating black vote dilution. App. 101a (¶ 106). Instead, at its September 17, 1992, meeting, without studying the NAACP proposal and with two years left before the next Board election, the Board unanimously passed a motion of intent to adopt the Police Jury plan which it had initially found unsatisfactory. *Id.* at 100a (¶ 106). At a public hearing the next week, 15 residents voiced their opposition to adoption of the Police Jury plan, principally on the ground that it would dilute black voting strength; no one spoke in favor of that plan.

---

[8] Election precincts are administrative units established for the purpose of conducting elections, including siting polling booths and allocating election officials. See generally Corrected United States' and Defendants-Intervenors, Proposed Post-Trial Findings of Fact, 12-13 (¶ 18).

[9] The Board knew that it was "free to request precinct changes from the Policy Jury necessary to accomplish [its] redistricting plans," App. 7a (quoting *id.* at 72a (¶ 23)); *id.* at 99a-100a (¶ 102)—a practice that was "quite common" state-wide. *Id.* at 22a (¶ 22). There was no discussion at the time of any need to minimize the number of precinct splits or the costs of required splits. See generally U.S. Exhs, 26-28, 32, 34 (Board minutes); Exh. 102 ¶¶ 9, 10 (testimony of Jerome Blunt).

Id. at 7a-8a, 101a (¶ 108). The NAACP presented a petition containing over 500 signatures opposing adoption of the Police Jury plan, and asking the Board to consider an alternative. *Id.* at 7a-8a, 101a-102a (¶ 108). The Board adopted the Police Jury plan at its next meeting. *Id.* at 8a, 102a (¶ 109).

The Board submitted the Police Jury plan to the Attorney General for preclearance. On August 30, 1993, the Attorney General objected to the plan under Section 5 of the Voting Rights Act, citing information showing the clear dilutive effect of the plan on minority voting strength. Such information had not been provided when the Police Jury submitted the same plan in 1991. App. 8a, 106a (¶ 119), 154a-158a.

3. On July 8, 1994, the Board filed a declaratory judgment action seeking Section 5 preclearance from a three-judge district court for the District of Columbia. On November 2, 1995, following a two-day trial, the district court granted preclearance. App. 1a-65a.

The court first held that Section 5 preclearance cannot be denied based upon a violation of Section 2. App. 11a-12a. The court reasoned that Section 2 "uses plainly different language and serves a different function from that of section 5." *Id.* at 15a. The court noted that the discriminatory effects addressed by Section 5 are limited to retrogressive effects, whereas Section 2's "result" standard "can be violated * * * irrespective of whether the disputed voting practice is better or worse than whatever it is meant to replace." *Ibid.* The court did not address the United States' alternative argument that a Section 2 violation is an independent basis for denying Section 5 preclearance, *i.e.*, an affirmative defense, on which the United States bears the burden of proof. See U.S. Post-Trial Br. 32 n.27.

The district court concluded that the legislative history of the Act did not support denial of preclearance based on a Section 2 violation. In its view, resort to the legis-

lative history was inappropriate because the language of the statute is "unambiguous." App. 17a. The court also refused to accord any deference to the Department of Justice regulation requiring the Attorney General to withhold preclearance of voting changes that clearly violate Section 2, 28 C.F.R. 51.55(b)(2), on the ground that preclearance does not depend on administrative proceedings, but may be obtained from a federal court in the first instance. App. 18a-19a.

The district court then held that the Board, in adopting the Police Jury plan, did not have a racially discriminatory purpose that would bar preclearance. App. 27a-29a. In deciding that question, the court held that "evidence of a section 2 violation" should not be considered as "evidence of discriminatory purpose under section 5." *Id.* at 23a. The court thus refused to consider, as relevant to the Board's purpose, the Board's contemporaneous awareness that the Police Jury plan precluded any meaningful opportunity for blacks to elect representatives of their choice. The district court also refused to consider evidence that the Board had a history of racial discrimination, including continuing noncompliance with the terms of the court order in the two-decade-old school desegregation case. *Id.* at 34a n.18. The district court noted that the Board "offered several reasons for its adoption of the Police Jury plan that clearly were not real reasons." *Id.* at 27a & n.15. It nonetheless found "legitimate, nondiscriminatory motives" for the Board's adoption of the Police Jury plan: "The Police Jury plan offered the twin attractions of guaranteed preclearance and easy implementation (because no precinct lines would need redrawing)." *Id.* at 27a-28a.

Judge Kessler concurred in part and dissented in part. App. 37a-65a. She agreed with the majority that a Section 2 violation does not prevent Section 5 preclearance, *id.* at 37a, but dissented from the majority's conclusion that the Board acted with legitimate, nondiscriminatory motives,

id. at 38a-65a. Taking into account evidence that she believed was clearly relevant under *Village of Arlington Heights* v. *Metropolitan Housing Dev. Corp.*, 429 U.S. 252, 266 (1977), and that the majority incorrectly ignored, Judge Kessler found that "the evidence demonstrates conclusively that the Bossier School Board acted with discriminatory purpose." App. 39a.

THE QUESTIONS PRESENTED ARE SUBSTANTIAL

The decision of the district court seriously undermines enforcement of Section 5 of the Voting Rights Act of 1965, 42 U.S.C. 1973c, as amended in 1982. The court applied the wrong standard for deciding whether Bossier Parish redistricted with a discriminatory purpose. It concluded that evidence that this Court consistently has held to be relevant to proving discriminatory purpose—including evidence of a history of discrimination by the jurisdiction, evidence of the proposed redistricting plan's dilutive effect on minority representation, and other relevant evidence—should not be considered in assessing purpose under Section 5. The court based that holding on its observation that such evidence would also be relevant in a Section 2 case alleging unlawful vote dilution. App. 23a. By thus arbitrarily excluding probative evidence of purpose, the district court seriously impairs the effectiveness of Section 5 in preventing implementation of voting changes adopted with a discriminatory purpose. The court's restriction on the Section 5 purpose inquiry also squarely conflicts with established law regarding proof of purpose in discrimination litigation. *E.g.*, *Rogers* v. *Lodge*, 458 U.S. 613, 623-624 (1982); *City of Mobile* v. *Bolden*, 446 U.S. 55, 70 (1980) (opinion of Stewart, J.) (citing *Village of Arlington Heights* v. *Metropolitan Housing Dev. Corp.*, 429 U.S. 252, 266 (1977)).

The district court also erred in holding that preclearance may not be denied on the ground that the proposed vot-

ing change violates Section 2 of the Act, 42 U.S.C. 1973. The court thereby effectively invalidated the Department of Justice regulation requiring denial of preclearance when a clear violation of Section 2 is established. 28 C.F.R. 51.55(b)(2). The validity of that regulation presents an important question: Since 1985, when Section 51.55(b)(2) was adopted, the Attorney General has on more than 40 occasions interposed Section 5 objections based in whole or in part on clear Section 2 violations. Section 51.55(b)(2) implements Congress's amendment of the Voting Rights Act in 1982, and it was specifically approved by the House Subcommittee on Civil and Constitutional Rights following oversight hearings in 1985. The district court's holding, in contrast, impedes use of Section 5 as Congress intended, to "shift the advantage of time and inertia from the perpetrators of the evil to its victims." *South Carolina* v. *Katzenbach*, 383 U.S. 301, 328 (1966). Under the district court's decision, clearly dilutive voting practices must be precleared under Section 5. Minority voters (or the Attorney General, see 42 U.S.C. 1971(c)) would thus be left to initiate litigation, resubmit evidence to prove a Section 2 violation that was already manifest in the Section 5 proceeding, and suffer clearly unlawful discrimination in the interim.

Because the District Court for the District of Columbia has exclusive jurisdiction over Section 5 declaratory judgment actions, and appeal lies only to this Court, 42 U.S.C. 1973c, the important federal questions presented by this case warrant this Court's attention.

1. a. The district court erred as a matter of law in failing to consider evidence directly relevant to the question of discriminatory purpose: the Board's awareness of the dilutive effect of the Police Jury plan on minority voting strength and the Board's historical and ongoing discrimination. In refusing to consider this evidence as bearing on purpose, the district court failed to follow the approach established by *Arlington Heights*, 429 U.S. at

266. Instead, it expressly and repeatedly articulated an erroneous standard, holding that what it characterized as "section 2 evidence"—evidence that would be relevant in a Section 2 vote dilution proceeding—could not also be used in determining purpose under Section 5.[10] The district court's refusal to consider important, relevant evidence led it incorrectly to find that the Board had no discriminatory purpose. That refusal also infected the findings of fact the court made in support of its determination that the Board had nondiscriminatory reasons for adopting its plan.[11]

The district court's refusal to consider evidence of the effect of the Board's redistricting plan in diluting minority voting strength is squarely contrary to this Court's settled approach to determining racially discriminatory purpose. In the voting rights context, evidence of the impact of a disputed decision is "an important starting point" for an inquiry into purpose. *Bolden*, 446 U.S. at 70 (citing *Arlington Heights*, 429 U.S. at 266); see *Rogers*, 458 U.S. at 623-624.[12] Discrimination cases arising in other

---

[10] App. 24a ("we will not permit section 2 evidence to prove discriminatory purpose under section 5"); see *id.* at 23a ("*Miller* [v. *Johnson*, 115 S. Ct. 2475 (1995)] forecloses the permitting of section 2 evidence in a section 5 case"); *ibid.* (refusing to "consider evidence of a section 2 violation as evidence of discriminatory purpose under section 5").

[11] Moreover, the district court's decision must be reversed even if this Court believes that the Board may have been motivated only in part by a discriminatory purpose. See *City of Pleasant Grove* v. *United States*, 479 U.S. 462, 471-472 (1987) (affirming finding of impermissible purpose where plan was motivated "in part" by discrimination).

[12] This Court has affirmed several three-judge district court decisions endorsing the application of *Arlington Heights* to Section 5's purpose prong. See *Busbee* v. *Smith*, 549 F. Supp. 494, 516-517 (D.D.C. 1982), aff'd, 459 U.S. 1166 (1983); *City of Port Arthur* v. *United States*, 517 F. Supp. 987, 1019 (D.D.C. 1981), aff'd, 459 U.S. 159 (1982); *City of Pleasant Grove* v. *United States*, 568 F. Supp. 1455, 1458 (D.D.C. 1983).

contexts also require consideration of the impact of the disputed practice as part of the assessment of purpose. See, *e.g.*, *Pullman-Standard* v. *Swint*, 456 U.S. 273, 289 & n.18 (1982); *Personnel Administrator* v. *Feeney*, 442 U.S. 256, 274-275 (1979). Racially discriminatory purpose is most often proved by circumstantial evidence; in considering whether such a purpose is present, a court must examine the "totality of the relevant facts, including the fact, if it is true, that the [challenged practice] bears more heavily on one race than another." *Washington* v. *Davis*, 426 U.S. 229, 242 (1976).

Although evidence that a voting practice substantially dilutes minority voting strength ordinarily does not itself demonstrate the presence of a discriminatory purpose, it is certainly relevant in making that determination. This is especially true where, as here, the discriminatory effect of the practice was known to the Board at the time the practice was adopted. This Court held in *Rogers* that "overwhelming evidence of bloc voting along racial lines," and the fact that "no black had ever been elected" to the legislative body in question "bear heavily on the issue of purposeful discrimination." 458 U.S. at 623. The district court here therefore erred in refusing to consider, as relevant to the Board's purpose, the substantial, largely undisputed evidence we presented demonstrating that the Board's plan was adopted with knowledge that it would lead to minority vote dilution. See *id.* at 623-627.[13]

[13] The Board admitted that it was "obvious that a reasonably compact black-majority district could be drawn within Bossier City," App. 76a (¶ 36), and that the outlines of a compact northern majority-black district were readily discernible from the plan the NAACP submitted to the Board, *id.* at 114a (¶ 148). Undisputed evidence established that blacks comprised a significant proportion of voters in Bossier Parish. *Id.* at 2a. "There was * * * overwhelming evidence of bloc voting along racial lines" and, "although there had been black candidates, no black had ever been elected" to the Bossier Parish School Board. *Rogers*, 458 U.S. at 623; App. 40a, 115a-127a (¶¶ 153-196). But "rather than consider either of the alternative proposals [that included majority-black districts] brought before it or direct their own cartographer to draft one, the School Board adopted a plan 'which guaranteed that blacks would remain underrepresented on the [Board] by comparison to their numerical strength in the enlarged community.'" *Id.* at 41a (quoting *City of Port Arthur*, 517 F. Supp. at 1022). Such "actions having foreseeable and anticipated disparate impact are relevant evidence to prove the ultimate fact, forbidden purpose." *Columbus Bd. of Educ.* v. *Penick*, 443 U.S. 449, 464 (1979); see also *Feeney*, 442 U.S. at 279 n.25.

The district court also failed to take into account other relevant purpose evidence solely because such evidence would also be relevant in a Section 2 proceeding. The court, for example, did not consider the Board's substantial and continuing legacy of discrimination against blacks. Compare App. 34a n.18 with 42a-46a, 136a-138a (¶¶ 236-243). This Court has held that "[e]vidence of historical discrimination is relevant to drawing an inference of purposeful discrimination." *Rogers*, 458 U.S. at 625; accord *Arlington Heights*, 429 U.S. at 267. In addition, the fact that "some [parish] schools still remain essentially segregated" buttresses the United States' contention that the Board adopted this dilutive voting system for a discriminatory purpose. *Rogers*, 458 U.S. at 624-625. The Board's recent disbandment of a biracial committee in violation of a court desegregation order because "the tone of the committee made up of the minority members * * * quickly turned toward becoming involved in policy," App. 105a (¶ 116), also reflected the Board's historic preference to avoid minority participation.[14] The district court should also have taken into account the fact that the Board has been unresponsive to reasonable concerns of the black community; that is an "important element * * * of [the] number of circumstances a court should consider in determining whether discriminatory purpose may be inferred." *Rogers*, 458 U.S. at 626 n.9.

[14] As Judge Kessler noted, "[w]hat exactly the Committee was supposed to become involved in, if not policy, is unclear." App. 46a.

b. Contrary to the district court's suggestion, App. 23a, acknowledging the relevance of evidence of the discriminatory effect of a voting practice is not equivalent to holding that Section 5 preclearance can be denied based solely upon a violation of Section 2. We do not contend that evidence that would show illegal vote dilution, or evidence of a history of discrimination, *by itself* amounts to proof of discriminatory purpose. Such evidence, however, is indisputably *relevant* to the purpose inquiry. See pages 15-17, *supra*; *Arizona* v. *Reno*, 887 F. Supp. 318, 323-324 (D.D.C. 1995) (evidence relevant to Section 2 violation also relevant to Section 5 inquiry), appeal dismissed, No. 95-299 (Mar. 1, 1996).

The district court also incorrectly equated the United States' argument that the Board's adoption of a plan that it knew diluted minority voting strength indicated its discriminatory purpose with the purpose argument the Court rejected in *Miller* v. *Johnson*, 115 S. Ct. 2475 (1995). App. 34a-36a. In the portion of *Miller* on which the district court relies, *id.* at 23a-24a (citing *Miller*, 115 S. Ct. at 2492-2493), the Court held only that purposeful refusal to subordinate traditional districting principles in order to "maximize" the number of majority-black districts fails to demonstrate purposeful discrimination. Here, in contrast, the United States points not to a failure to "maximize" majority-black districts, but to the Board's adoption of a plan without even a single majority-black district. The Board's awareness of the plan's discriminatory effect is clearly relevant to the existence of discriminatory purpose.[15]

[15] The Court in *Miller* did not refuse to consider evidence relevant to discriminatory purpose. Indeed, in evaluating whether the plan before it was adopted with a discriminatory purpose, the *Miller* Court considered the ameliorative impact of the plan before it. 115 S. Ct. at 2492. *Miller* is thus fully consistent with the substantial precedent mandating consideration of the effect of a decision as one element in the totality of circumstances that indicates whether the decision was purposefully discriminatory. Indeed, throughout its *Miller* opinion, the Court cited *Arlington Heights* with approval. *Miller*, 115 S. Ct. at 2483, 2487, 2489.

c. The totality of the evidence thus must be reevaluated in view of the facts the court incorrectly ignored. Reversal is required "unless the record permits only one resolution of the factual issue" consistent with the finding below. *Swint*, 456 U.S. at 292. The only conclusion the record here supports is precisely the opposite of the one the district court reached; thus, at a minimum, a remand is required. In this case, as in *Swint*, the district court "failed to consider relevant evidence" and certainly "might have come to a different conclusion had it considered that evidence." *Ibid.*

When the facts the district court disregarded are considered together with the other relevant evidence in this case, it is clear that the district court might have come to a different conclusion had it not made its legal errors. We have already indicated the relevance to the purpose determination of the undisputed evidence that the Police Jury plan diluted the opportunity of minorities to elect representatives of their choice, that the Board had a history of racial discrimination, and other facts relevant to purpose the district court ignored. Pages 15-18 & n.13, *supra*. The district court's erroneous refusal to consider that evidence also likely caused it to evaluate improperly the limited evidence it did consider as bearing on purpose.

Thus, when the dilutive effect of the Board's plan is taken into account, Board members' statements of opposition to "black representation" on the Board clearly do, contrary to the district court's conclusion, indicate a purpose to prevent "the presence of black persons as members of the School Board." App. 31a.[16] Similarly,

[16] The district court reasoned that the opposition to "the intentional drawing of majority-black districts in order to ensure black representation on the Board" was "hardly an indication of discriminatory purpose unless section 5 imposes an affirmative obligation

the district court's conclusion (*id.* at 28a) that avoiding controversy was a legitimate and nondiscriminatory reason for adoption of the Police Jury plan was dependent on the court's erroneous decision completely to ignore vote dilution. The only controversy the School Board faced at the time was black citizens' opposition to the strongly dilutive effect of any plan with exclusively majority-white districts.[17] The district court also saw the Board's appointment of a black member to a vacant School Board post as indicative of the Board's lack of opposition to black representation, and thus as evidence of the lack of a discriminatory purpose. *Id.* at 30a. But that appointment was plainly a meaningless palliative. When the evidence of racially polarized bloc voting is taken into account, along with the fact that all the plan's districts are majority-white, it is clear that the black appointee's service was virtually certain to end—as it in fact did end—in six months, when the appointed black Board member faced an election challenge by a white in an overwhelmingly white district.

2. The district court concluded, on the basis of the evidence it did consider, that the Board had non-racially

---

to draw additional majority-black districts." App. 31a. If Section 5 alone imposes no such obligation, it remains relevant that, in certain circumstances, Section 2 does. When elected officials engaged in redistricting explain that they drew all majority-white districts to resist the correct operation of Section 2 in the circumstances before them, such an explanation is not, contrary to the district court's finding, an "entirely legitimate reason[]" for the disputed plan, *id.* at 31a, but is strongly indicative of discriminatory purpose.

[17] The proposal to adopt the Policy Jury plan precipitated an overflow meeting filled with concerned black citizens. Their petition opposing the Board's action was the largest presented on any subject in years. App. 7a-8a, 101a (¶ 108). Several citizens spoke in favor of the feasibility of drawing one or more majority-black districts, and no citizens spoke in favor of the Policy Jury plan that the Board proposed to adopt. *Id.* at 8a.

discriminatory reasons for adopting the Police Jury plan. That finding, too, was infected by the court's artificially restricted view of the relevant evidence, and was, in any event, clearly erroneous.

The court concluded that "guaranteed preclearance" was a legitimate, nondiscriminatory reason for the Board's adoption of the Police Jury plan. App. 28a. The fact that that plan had previously been precleared might perhaps have recommended the Police Jury plan over other districting plans comprised exclusively of majority-white districts. But the Board could not reasonably have believed that a plan that would honor traditional districting principles and improve the opportunity of black citizens to participate in the political process would have had less chance of preclearance than the Police Jury plan.[18] "Guaranteed preclearance" thus cannot explain why the Board preferred the Police Jury plan to the NAACP plan or any other plan providing an opportunity for black voters to elect a candidate of their choice. The court's finding that it did was clearly erroneous.

The district court also clearly erred in evaluating the specific "sequence of events" leading up to the adoption of the Police Jury plan. App. 33a; see *Arlington Heights*, 429 U.S. at 267. The court gave no weight to the fact that the Board hastened to adopt the Police Jury plan only after black voters presented a non-dilutive plan. The court's only explanation of that unusual action was to dismiss the NAACP proposal as not "plausible," because it "split 46 precincts." App. 33a. The court found that "the School Board entirely reasonably *could have*, when faced with the NAACP's plan, arrived quickly at the conclusion that zero precinct splits was significantly more desirable than 46." *Id.* at 29a (emphasis added). But

---

[18] The Police Jury plan disserved the School Board's traditional concerns by lopsidedly distributing the schools within the districts so that some Board members had no schools to represent, and by "wreak[ing] havoc with the incumbencies of four of the School Board members." App. 28a. The plan was thus much less

the correct focus in determining the purpose behind the adoption of the disputed plan is on the Board's *actual* purpose *at the time* it adopted that plan. *City of Pleasant Grove* v. *United States*, 479 U.S. 462, 470 (1987) (rejecting argument "developed after the fact" because it was "not the true basis" for decision). The evidence shows that the Police Jury plan split 13 existing precincts and created 20 new precincts. App. 85a (¶ 60), 88a-89a (¶ 70). The Board itself anticipated splitting precincts. *Id.* at 29a, 95a (¶ 89). There is no finding, nor even any suggestion in the record, that the Board ever considered the relative number of such splits, or their potential cost, as a factor in selecting the plan it adopted. And the Board never considered measures that could have reduced the number of precinct splits in the NAACP plan. *Id.* at 86a (¶ 62), 101a (¶ 106).[19]

---

plausible when adopted by the School Board than by the Police Jury. A plan that more evenly distributed schools among districts, and that also enhanced the political representation of black voters, could not reasonably have appeared to be a worse candidate for preclearance than the plan the Board submitted.

[19] The fact that the Board has proffered shifting justifications for its decision also supports a finding that it discriminated. *E.g.*, *Southwest Merchandising Corp.* v. *NLRB*, 53 F.3d 1334, 1344 (D.C. Cir. 1995); *EEOC* v. *Ethan Allen, Inc.*, 44 F.3d 116, 120 (2d Cir. 1994) (citing cases); cf. *St. Mary's Honor Center* v. *Hicks*, 113 S. Ct. 2742, 2749 (1993) ("The factfinder's disbelief of the reasons put forward by the defendant (particularly if * * * accompanied by a suspicion of mendacity) may, together with the elements of the prima facie case, suffice to show intentional discrimination."). As the district court noted, "[i]n the course of litigation, the School Board has offered several reasons for its adoption of the Police Jury plan that clearly were not real reasons," including that the Board sought to comply with this Court's decision in *Shaw* v. *Reno*, 113 S. Ct. 2816 (1993), which post-dated the Board's decision. App. 27a n.15. Other clearly pretextual reasons included the Board's stated desire to avoid "voter confusion" by adopting the same boundaries for the Police Jury and School Board districts. The voter-confusion rationale was raised for the first time *post hoc*, in the Board's Section 5 submission, and was not a genuine Board interest, given that Louisiana jurisdictions commonly have different School Board and Police Jury districts, and the Board had for more than a decade had districts different from the Police Jury's. See *id.* at 72a (¶ 22). Finally, although the Board had initially sought to redistrict in a manner that would protect incumbent Board members, it promptly abandoned that interest when faced with the proposal to draw one or more majority-black districts. *Id.* at 33a, 49a n.6, 73a (¶ 26).

3. a. The district court also erred in concluding that a non-retrogressive redistricting plan that clearly results in minority vote dilution in violation of Section 2 must be granted preclearance under Section 5. The Department of Justice regulations establishing procedures for the implementation of Section 5 provide that, even where a "submitted change is free of discriminatory purpose and retrogressive effect," the Attorney General nonetheless shall withhold preclearance where "a bar to implementation of the change is necessary to prevent a clear violation of amended section 2." 28 C.F.R. 51.55(b)(2). That regulation correctly interprets the Voting Rights Act, and should be sustained for purposes of both administrative and judicial Section 5 preclearance proceedings.[20]

All indicia of congressional intent show that, in amending Section 2 in 1982, Congress intended Section 2 and Section 5 to work together as provided in Section 51.55 (b)(2). The Senate Judiciary Committee Report on the amendments stated that Congress contemplated that a violation of amended Section 2 would preclude preclearance under Section 5: "In light of the amendment to section 2, *it is intended that a section 5 objection also follow if a new voting procedure itself so discriminates as to violate section 2.*" S. Rep. No. 417, 97th Cong., 2d Sess. 12 n.31 (1982) (emphasis added). The Senate

---

[20] The Department of Justice regulations authorize the Attorney General to deny preclearance only to prevent a "clear violation" of Section 2. 28 C.F.R. 51.55(b)(2). The undisputed evidence in this case established a clear Section 2 violation. The Court thus need not reach the question whether in judicial proceedings preclearance may also be denied where a Section 2 violation is present, but is less than clear.

Report is the "authoritative source" for construction of the 1982 amendments to the Voting Rights Act. *Thornburg* v. *Gingles*, 478 U.S. 30, 43 n.7 (1986).

When Congress amended Section 2, it did so against the backdrop of a principle it found articulated in *Beer* v. *United States*, 425 U.S. 130 (1976), that a voting practice free of discriminatory purpose or retrogressive effect under Section 5 nonetheless may not be precleared if it is illegally dilutive.[21] *Beer* announced that principle in terms of practices that were racially discriminatory in violation of the Constitution: The Senate Report quoted "the rule of *Beer*" that a voting change is objectionable if it "so discriminates on the basis of race or color as to violate the Constitution." S. Rep. No. 417, *supra*, at 12 n.31 (quoting 425 U.S. at 141). The Senate Report's reference to "the rule of *Beer*" in connection with its conclusion that preclearance should be denied based on a violation of amended Section 2, however, reflects Congress's assumption that, under that rule, a voting change that is dilutive in violation of Section 2 would also, even in the absence of any discriminatory purpose to dilute, not be precleared.

That assumption followed from the 1982 Congress's awareness that, at the time *Beer* was decided, both Section 2 and the Constitution were understood to employ the same standard for determining the existence of racial vote

[21] *Beer* held that Section 5's prohibition against voting changes with a discriminatory effect seeks principally "to insure that no voting-procedure changes [will] be made that would lead to a retrogression in the position of racial minorities with respect to their effective exercise of the electoral franchise." 425 U.S. at 141. Accordingly, the Court held that a change that leaves racial minorities no worse off than they were before the change has no discriminatory effect for purposes of Section 5. But the Court went on to state that preclearance should nonetheless be denied to any voting change that "so discriminates on the basis of race or color as to violate the Constitution." *Ibid.* The Court specifically cited the vote-dilution cases as examples of discrimination that could be reached under Section 5. *Id.* at 142 n.13.

dilution.[22] As a result of *Bolden* and the 1982 amendment of Section 2, however, the constitutional and statutory standards diverged.[23] Acting in 1982, after the *Bolden* decision, Congress believed that that divergence should not alter the applicability of the sound general principle that illegally dilutive voting practices should not be precleared under Section 5. Having amended the Voting Rights Act to reestablish that voting practices that even unintentionally result in vote dilution constitute discrimination in violation of Section 2, Congress contemplated that voting changes that violate Section 2 would not be precleared.

Congressional oversight hearings in 1985 further confirm that Section 51.55(b)(2) accurately implements congressional intent. In May, 1985, the Attorney General issued

[22] S. Rep. No. 417, *supra*, at 18-19 & n.59; see also *Chisom* v. *Roemer*, 501 U.S. 380, 392 (1961) ("At the time of the passage of the Voting Rights Act of 1965, § 2 * * * was viewed largely as a restatement of the Fifteenth Amendment."); *Bolden*, 446 U.S. at 60-61 ("the sparse legislative history of § 2 makes clear that it was intended to have an effect no different from that of the Fifteenth Amendment itself").

[23] *Bolden* held that proof of discriminatory intent is necessary to establish unlawful vote dilution under Section 2 or the Constitution. It was in response to *Bolden* that Congress in 1982 amended Section 2. See generally S. Rep. No. 417, *supra*, at 15-16. Concluding that *Bolden*'s intent test put plaintiffs to an inordinately difficult burden of proving unlawful dilution, Congress codified in amended Section 2 the "results" test originally set forth in *White* v. *Regester*, 412 U.S. 755 (1973). See *Gingles*, 478 U.S. at 43-44. Section 2 now prohibits any practice "which results in a denial or abridgement" of the right to vote on the basis of race or color. 42 U.S.C. 1973(a). Tracking the language of *White*, 412 U.S. at 766, Section 2 provides that a violation will be established if "the political processes leading to nomination or election * * * are not equally open to participation by members of a [protected class] in that its members have less opportunity than other members of the electorate to participate in the political process and to elect representatives of their choice." 42 U.S.C. 1973(b). The 1982 amendments also extended Section 5's preclearance requirement, which was due to expire on August 8, 1982. 42 U.S.C. 1973b(a)(8).

his proposed Section 5 regulations. See 50 Fed. Reg. 49,122. Although the wording differed to some extent from the final provision, the proposed regulations provided that the Attorney General would object to voting changes in the case of a clear violation of Section 2. *Id.* at 19,131 (proposed 28 C.F.R. 51.56(c)(1)). Congress then held oversight hearings on the proposed regulations, and acquiesced in the Attorney General's approach.[24] At the oversight hearings, the Assistant Attorney General for the Civil Rights Division of the Department of Justice testified in detail that under the proposed regulations Section 5 objections might be based on clear Section 2 violations.[25] Congress's failure to alter the enforcing agency's policy, after full review of that policy, "make[s] out an unusually strong case of legislative acquiescence in and ratification by implication of" the agency's position. *Bob Jones Univ.* v. *United States*, 461 U.S. 574, 599 (1983).

b. The district court erred in relying on the difference between the meaning of "result" in Section 2 and "effect" in Section 5, and in thus concluding that the statutory text "unambiguous[ly]" rejected the principle that Section 5 preclearance can be denied based on a Section 2 violation. App. 17a. The principle that preclearance should not be granted to voting changes that would clearly violate Section 2 does not depend on reading those two terms to have the same meaning. Rather, as the regulation provides, even where a voting change *meets* Section 5's nondiscriminatory-purpose and non-retrogression criteria, neither the Attorney General nor the court should be required to sanction it and permit it to be implemented if

---

[24] See *Proposed Changes to Regulations Governing Section 5 of the Voting Rights Act: Oversight Hearings Before the Subcomm. on Civil and Constitutional Rights of the House Comm. on the Judiciary*, 99th Cong., 1st Sess. (1985) [hereinafter *Oversight Hearings*].

[25] See *Oversight Hearings* 149, 150-152 (statement of Wm. Bradford Reynolds).

it is clearly unlawfully dilutive. Nothing in the text of the Voting Rights Act speaks to that issue, and the legislative history uniformly supports the Attorney General's view.

The district court also noted that the allocation of the burden of proof differs under Section 5 and Section 2, and suggested that it would be inappropriate to require a covered jurisdiction to disprove a Section 2 violation in order to obtain Section 5 preclearance. App. 16a. We agree that, under Section 5, the covered jurisdiction bears only the burden of proving the absence of both a retrogressive effect and a discriminatory purpose. The Department of Justice regulation permits a clear Section 2 violation to be raised as an affirmative defense against preclearance, upon which the United States, not the covered jurisdiction, would bear the burden of proof. If the regulation is applied to judicial preclearance proceedings, the United States would bear at least the same burden of proof in interposing a Section 2 violation as a defense as it would bear as a plaintiff in Section 2 litigation.

CONCLUSION

The Court should note probable jurisdiction.

Respectfully submitted.

DREW S. DAYS, III
Solicitor General

DEVAL L. PATRICK
Assistant Attorney General

PAUL BENDER
Deputy Solicitor General

CORNELIA T.L. PILLARD
Assistant to the Solicitor General

DAVID K. FLYNN
EILEEN PENNER
Attorneys

MARCH 1996

☆ U. S. GOVERNMENT PRINTING OFFICE: 1996 405017 40084

Supreme Court, U.S.
FILED

(2)

No. 95 1455 MAR 11 1996

OFFICE OF THE CLERK

In the Supreme Court of the United States

OCTOBER TERM, 1995

JANET RENO, APPELLANT

v.

BOSSIER PARISH SCHOOL BOARD

ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF COLUMBIA

APPENDIX TO THE JURISDICTIONAL STATEMENT

DREW S. DAYS, III
Solicitor General

DEVAL L. PATRICK
Assistant Attorney General

PAUL BENDER
Deputy Solicitor General

CORNELIA T.L. PILLARD
Assistant to the Solicitor General

DAVID K. FLYNN
EILEEN PENNER
Attorneys

Department of Justice
Washington, D.C. 20530
(202) 514-1004

170 pp

TABLE OF CONTENTS

APPENDIX A — Page

District court opinion 1a

APPENDIX B

Joint Stipulations 66a

APPENDIX C

Attorney General's objection letter dated Aug. 30, 1993 ..... 154a

APPENDIX D

Attorney General's letter denying reconsideration dated Dec. 20, 1993 ..... 159a

APPENDIX E

Notice of Appeal 163a

APPENDIX F

Voting Rights Act of 1965, §§ 2, 5, 42 U.S.C. 1973, 1973c 165a

APPENDIX G

28 C.F.R. 51.55 ..... 168a

APPENDIX A

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

Civ. A. No. 94-1495 (LHS (USCA), CRR, GK)

BOSSIER PARISH SCHOOL BD., PLAINTIFF

v.

JANET RENO, DEFENDANT

and

GEORGE PRICE, ET AL., DEFENDANT-INTERVENORS

Nov. 2, 1995

Before: SILBERMAN, Circuit Judge, RICHEY, and KESSLER, District Judges.

MEMORANDUM OPINION OF THREE-JUDGE COURT UNDER THE VOTING RIGHTS ACT

SILBERMAN, Circuit Judge.

INTRODUCTION

Plaintiff, Bossier Parish School Board, seeks pre-clearance under section 5 of the Voting Rights Act,

42 U.S.C. § 1973c, for its proposed redistricting. We shall grant the requested preclearance.

I.

Bossier Parish is located in northwestern Louisiana, bordered on the north by Arkansas. As reported by the 1990 census, Bossier Parish's population is 86,088, of whom 20.1% are black. Blacks constitute 17.6% of the voting age population of Bossier Parish and 15.5% of its registered voters. Bossier City, the Parish's most populous city, is located in the central western portion of the Parish and has a population of 52,721, of whom 17.95% are black. The black population is also concentrated in Benton, Plain Dealing, Haughton, and in the unincorporated community of Princeton.

Bossier Parish is governed by a Police Jury, the 12 members of which are elected from single-member districts for consecutive four-year terms. At no time in Parish history have the Police Jury electoral districts included a district with a majority of black voters. Since 1983, however, a black police juror, Jerome Darby, has been elected three times from a majority-white district, the last time unopposed.[1]

The Police Jury undertook to redraw its electoral districts because of population shifts, as reflected in

[1] The district from which Darby was elected in 1983 and 1987 was unique in Bossier Parish. Many of the white residents of the district resided on or near Barksdale Air Force base and tended not to vote in Bossier Parish. This district, when the largely nonvoting military population is removed, was at least 45% black for the 1983 and 1987 Police Jury elections. In the 1991 Police Jury redistricting, however, the Air Force base was removed from Darby's district, after which he ran a successful, unopposed campaign.

the 1980 census, that resulted in widely divergent populations among the existing districts. In November 1990, the Police Jury hired a cartographer, Gary Joiner, to assist in the process. At a public hearing on the Police Jury redistricting, black residents inquired about the possibility of creating majority-black districts, and were told that the black population of Bossier Parish was too far-flung to create any such district. On April 30, 1991, the Police Jury unanimously adopted one of the plans prepared by their cartographer as the final plan. The plan served the police jurors' incumbency concerns, and roughly provided for an even distribution of population among the districts. That same day, Concerned Citizens, a group of black residents of Bossier Parish, submitted a letter to the Police Jury complaining about the manner in which the redistricting plan was prepared and adopted. The plan was forwarded to the Attorney General on May 28, 1991, and, on July 29, 1991, the Attorney General precleared it. On January 11, 1994, the Police Jury unanimously voted to maintain the redistricting plan precleared by the Attorney General.

The Bossier Parish School Board is constituted much like the Police Jury.[2] The School Board has

[2] At all relevant times, the Bossier Parish School Board has been the defendant in a lawsuit seeking the desegregation of the school district's schools. *Lemon v. Bossier Parish Sch. Bd.*, Civ.Act. No. 10,687 (W.D.La., filed Dec. 2, 1964). The School Board was found liable for intentionally segregating its public schools in violation of the Fourteenth Amendment in *Lemon v. Bossier Parish Sch. Bd.*, 240 F.Supp. 709 (W.D. La.1965), *aff'd*, 370 F.2d 847 (5th Cir.), *cert. denied*, 388 U.S. 911, 87 S.Ct. 2116, 18 L.Ed.2d 1350 (1967). In 1979, the School Board sought a declaration of unitary status and

12 members elected from single-member districts to consecutive four-year terms. Both the Police Jury and School Board electoral districts have majority voting requirements: a candidate must receive a majority of the votes cast, not merely a plurality, to win an election. In the School Board's history, no black candidate has been elected to membership on the Board, though, as is discussed *infra*, one black School Board member was appointed to a vacant seat in 1992.

The Board, like the Police Jury, was also required to redraw its districts after the 1990 census. In fact, members of the Board had approached the Police Jury about the prospect of jointly redistricting, but were rebuffed by police jurors with incumbency concerns divergent from those of the School Board members.[3] The next scheduled election for the School Board was not until November 1994, and the School Board did not undertake the task of redistricting with particular urgency. In May 1991, the Board hired the same cartographer who had assisted the Police Jury with its redistricting, Gary Joiner. When he was hired, Joiner informed the Board that one readily available option was the Police Jury plan which had already been precleared by the Attorney General and which, if adopted by the Board, was sure to be precleared again. When he was hired, Joiner estimated

---

release from continuing court supervision. The Board's motion was denied and the school district has yet to be declared a unitary system. Of the 27 schools in the school district, five have predominately black student populations. [Stip ¶ 242.] The student population of Bossier Parish's schools is roughly 29% black.

[3] Throughout the 1980s, the Police Jury and School Board maintained different electoral districts.

that the redistricting would require 200 to 250 hours of his time.

At a Board meeting in September 1991, Board member Thomas Myrick suggested that the Board adopt the Police Jury plan. Myrick had participated in a number of meetings with Joiner and police jurors during their redistricting. No action was taken on Myrick's proposal.

On March 25, 1992, George Price, president of the local chapter of the NAACP and a defendant-intervenor in this case, wrote to the Board to express the NAACP's desire to be involved in every aspect of the redistricting process. Price received no response to his letter and, on August 17, 1992, wrote again, this time to say that the NAACP would dispute any plan that did not provide for majority-black districts. At an August 20, 1992 meeting of the School Board, Price presented a number of proposals concerning the management of the school district to the School Board, including the appointment of a black to fill the vacancy on the Board created by a Board member's departure. Sometime during August 1992, Board members met individually with Joiner to review different options for redistricting.[4]

---

[4] Testimony was presented that, during the redistricting process, members of the School Board made statements possibly indicating that the School Board was undertaking the redistricting with a discriminatory intent. S.P. Davis, attorney for Bossier Citizenship Education, Inc., a plaintiff-intervenor in *Lemon*, and a witness for defendant, testified that Board member Henry Burns told Davis that "while he personally favors having black representation on the board, other school board members oppose the idea." [U.S.Exh. 106, at 17.] George Price testified that Board member Barry Musgrove told Price that "while he sympathized with the

During the summer of 1992, the NAACP Redistricting Project in Baltimore, Maryland prepared a redistricting plan for the School Board that included two majority-black districts. Price presented the results of these efforts, a partial plan demonstrating the possibility of two majority-black districts, to a School Board official. Price was told that the School Board would not consider a plan that did not set forth all 12 districts. Price brought just such a plan to the September 3, 1992 meeting of the School Board. At that meeting, both Joiner and Bossier Parish District Attorney, James Buller, dismissed the NAACP plan because the plan required splitting a number of voting precincts.[5]

Under Louisiana law, school board districts must contain whole voting precincts (*i.e.*, they may not split voting precincts). *See* Louisiana Revised Statutes, Title 17, § 71.3E.(1) ("The boundaries of any election district for a new apportionment plan from which members of a school board are elected shall contain whole precincts established by the parish governing authority . . . ."). While there has been dispute over the matter, the parties have stipulated that school boards redistricting around the time the Bos-

---

concerns of the black community, there was nothing more he could do for us on this issue because the Board was 'hostile' toward the idea of a black majority district." [D-I Exh. B at ¶ 28.] Price further testified that Board member Thomas Myrick told Price and Thelma Harry, another intervenor and a member of the Benton City Council, that "he had worked too hard to get [his] seat and that he would not stand by and 'let us take his seat away from him.'" [Id. at ¶ 29; D-I Exh. E at ¶ 19.]

[5] Both the Police Jury plan and the NAACP plan appear in an appendix to this opinion.

sier Parish School Board was redistricting were "free to request precinct changes from the Police Jury necessary to accomplish their redistricting plans." [Stip ¶ 23.] Defendant-intervenors' witness, David Creed, testified that he himself had routinely drawn redistricting plans that split precincts. The largest number of precincts that Creed had ever split was eight—far fewer than the 46 precinct splits resulting under the NAACP plan that was presented to the Board or any other plan proffered since by defendant or defendant-intervenors. In any event, the School Board never approached the Police Jury to request precinct changes.

On September 10, 1992, the School Board interviewed candidates for the one vacant seat on the School Board. By a six-to-five vote, the School Board appointed the only black candidate, Jerome Blunt. Defendant-Intervenors contend that this appointment came despite "bitter opposition from white voters." [D-I Br. at 15.] On September 17, 1992, Blunt was sworn in as a Board member. His term in office lasted six months, ending in a special-election defeat to a white candidate. The vacant seat to which Blunt was appointed represented a district with the population that was 11% black.

At the same meeting during which Blunt took the oath of office, the School Board passed a motion of intent to adopt the Police Jury plan. The School Board announced that a public meeting would be held on Septembmer 24, 1992, with final action to be taken on the plan on October 1, 1992.

At the September 24, 1992 meeting, the School Board meeting room was filled to overflowing. Price presented the Board with a petition signed by more than 500 residents of the Parish asking that the

Board consider alternative redistricting plans. Additionally, a number of black residents addressed the Board to express their opposition to the proposed Police Jury plan. No one spoke in support of the plan. On October 1, 1992, the School Board unanimously adopted the Police Jury plan. Although he had taken office in time to vote on the plan, Jerome Blunt abstained. One other School Board member, Barbara W. Gray, was absent and did not vote.

The plan adopted by the School Board pits two pairs of incumbents against each other, leaving two districts with no incumbents. The plan does not distribute the school district's schools evenly among the electoral districts: some have several schools, others have none.

On January 4, 1993, the School Board submitted its proposed redistricting plan to the Attorney General. On March 5, 1993, the Attorney General requested more information on the redistricting plan, which the School Board provided. On August 30, 1993, the Attorney General interposed a formal objection to the School Board's plan. The Attorney General's letter indicated that, while the identical Police Jury plan had been precleared, the Attorney General objected on the basis of "new information." The Attorney General noted that an alternative plan which showed "that black residents are sufficiently numerous and geographically compact so as to constitute a majority in two single-member districts" and which was preferred by members of the black community had been presented to and rejected by the School Board. The Attorney General further cited the School Board's failure to "accommodate the requests of the black community."

The Attorney General's objection letter stated that, while the School Board was not required to "adopt any particular plan, it is not free to adopt a plan that unnecessarily limits the opportunity for minority voters to elect their candidates of choice." The Attorney General rejected the School Board's argument that the Louisiana statute concerning splitting precincts was sufficient reason not to create majority-black districts.

On September 3, 1993, the School Board unanimously voted to seek reconsideration of the objection from the Attorney General. On December 20, 1993, the Attorney General denied the Board's request for reconsideration. The School Board filed this action on July 8, 1994. On April 10 and 11, 1995, this matter was tried before a single judge of this panel, pursuant to an agreement of the parties. The record of those proceedings has been provided to the other two judges on the panel and closing argument was conducted before the entire panel on July 27, 1995.

In the course of this litigation, defendant-intervenors have prepared two more plans that provide for two majority-black districts. Both plans were prepared by defendant-intervenor's witness, William Cooper. The first plan (Cooper I) provides for one majority-black district in the northwestern corner of the parish and one in Bossier City. The second plan (Cooper II) is not materially different. Neither of these plans was before the School Board when it adopted the Police Jury plan.[6]

---

[6] Because we hold, as is discussed below, that section 2 of the Voting Rights Act, 42 U.S.C. § 1973, has no place in this section 5 action, much of the evidence relevant only to the section 2 inquiry is not discussed in this opinion. We, of

II.

For a political subdivision subject to section 5 to obtain preclearance of a voting change, it must prove that the proposed change "does not have the purpose and will not have the effect of denying or abridging the right to vote on account of race or color." 42 U.S.C. § 1973c. All parties agree that the "effect" prong of section 5 requires a showing of retrogression. *See Beer v. United States*, 425 U.S. 130, 141, 96 S.Ct. 1357, 1364, 47 L.Ed.2d 629 (1976). And, all parties agree that the School Board's proposed redistricting will not have a retrogressive effect. The case, then, turns on whether plaintiff can by a preponderance of the evidence demonstrate that the redistricting plan was enacted without discriminatory purpose.

The School Board claims to have proved that a variety of nondiscriminatory purposes animated the School Board when they adopted the Police Jury plan. The School Board adopted the Police Jury plan because it had been precleared by the Attorney General and would provide an easy way to avoid the controversy that increasingly surrounded the redistricting process. Further, the Police Jury plan required that no precincts be split, avoiding the difficulty and expense that would have accompanied any other plan, and particularly the only other plan the School Board had seen: the NAACP plan. The School Board have throughout the litigation proffered a series of other purposes said to have motivated the decision to adopt the Police Jury plan. Among these were a desire to

---

course, express no opinion on the merits of any case that may be filed under section 2.

adhere to traditional districting principles and to avoid racial gerrymandering.

Defendant asserts that preclearance should be denied for at least one of several reasons. Defendant argues that we should deny preclearance because the School Board's redistricting plan violates section 2 of the Voting Rights Act. If we conclude that we may not engage in the section 2 inquiry in this section 5 case, defendant contends that we may nonetheless consider the School Board's violation of section 2 as evidence of its discriminatory purpose. Defendant and defendant-intervenors further argue that we should deny preclearance based on "direct" and "indirect" evidence that the School Board acted with a discriminatory purpose.

III.

A.

Defendant and defendant-intervenors maintain that preclearance must be denied if the School Board's plan runs afoul of section 2 of the Voting Rights Act.[7] We hold, as has every court that has considered

---

[7] Plaintiffs "stipulated" that "[s]ection 5 preclearance of the Bossier Parish School Board's redistricting plan also must be denied if the plan violates Section 2 of the Voting Rights Act, as amended, 42 U.S.C.1973." [Stip ¶ 257.] Why plaintiffs would stipulate to a legal conclusion that no court considering the question has ever agreed to is beyond us. That plaintiffs did so stipulate does not, however, put the question beyond us. *See Kamen v. Kemper Fin. Servs.*, 500 U.S. 90, 99, 111 S.Ct. 1711, 1718, 114 L.Ed.2d 152 (1991) ("When an issue or claim is properly before the court, the court is not limited to the particular legal theories advanced by the parties, but rather retains the independent power to identify and apply the proper construction of governing

the question, that a political subdivision that does not violate either the "effect" or the "purpose" prong of section 5 cannot be denied preclearance because of an alleged section 2 violation.

Defendant puts before us many arguments for the inclusion of section 2 in this section 5 action. Defendant contends that the statutory language of section 2 and section 5 are in significant part so indistinguishable as to require the importation of section 2 into section 5. It is also argued that the legislative history of section 2 makes clear that Congress, in amending section 2, intended that voting practices be denied section 5 preclearance where those voting practices violate section 2. Defendant finally contends that this court should defer to defendant's own regulations, which interpret section 5 as requiring denial of preclearance where a proposed change violates section 2.

Defendant has presented many, if not all, of these arguments to other courts and to other panels of this court without any success. Defendant acknowledges these prior cases, but claims that they are distinguishable from the one before us. We, like our predecessors, reject defendant's latest—and by now rather shopworn—effort to squeeze section 2 into section 5.

We are unconvinced by defendant's casual effort to equate the standards of section 2 and section 5. In its brief, defendant asserts that "there is no meaningful distinction between the plain meaning of the term [*sic*] 'effect' and 'result.'" [Def.Br. at 28.] To

---

law."). In any event, plaintiff's strenuous argument that *Miller v. Johnson*, —— U.S. ——, 115 S.Ct. 2475, 132 L.Ed.2d 762 (1995), is dispositive of this case is apparently inconsistent with its stipulation.

reach this facile conclusion, one must willfully blind oneself to the fact that the term "results" in subsection (a) of section 2 is defined by reference to the language set forth in subsection (b) of section 2. 42 U.S.C. § 1973. None of the language that modifies "results" in section 2 appears in section 5.

Not only are the two sections drafted with different language, even a cursory review of the case law applying the two statutory sections as written and as applied over the years makes clear that the two sections serve very different functions.

Section 5 of the Voting Rights Act establishes an extraordinary procedure in our federal system. Before a "covered jurisdiction"—*i.e.*, a State or one of its political subdivisions which is subject to section 5 —may change a "voting qualification or prerequisite to voting, or standard, practice, or procedure with respect to voting," it must have the change precleared by either this court or the Attorney General.[8] *Id.*

---

[8] A "covered jurisdiction" is a "State or political subdivision with respect to which the prohibitions set forth in section 1973b(a) of [title 42] based upon determinations made under the first sentence of section 1973b(b) of [title 42] are in effect." The prohibitions apply to any State or political subdivision which (i) the Attorney General determines maintained on November 1, 1964, any test or device, and with respect to which (ii) the Plaintiff's Director of the Census determines that less than 50 per centum of the persons of voting age residing therein were registered on November 1, 1964, or that less than 50 per centum of such persons voted in the presidential election of November 1964. 42 U.S.C. § 1973b(b). A "test or device" is any requirement that a person as a prerequisite for voting or registration for voting (1) demonstrate the ability to read, write, understand, or interpret any matter, (2) demonstrate any educational achievement or his knowledge of any particular subject, (3)

§ 1973c. Preclearance in this court comes in the form of "a declaratory judgment that such qualification, prerequisite, standard, practice, or procedure does not have the purpose and will not have the effect of denying or abridging the right to vote on account of race or color, or in contravention of the guarantees set forth in . . . this title." *Id.* § 1973c.

The Supreme Court has read the "effect" prong of section 5 to require that "no voting-procedure changes would be made that would lead to a retrogression in the position of racial minorities with respect to their effective exercise of the electoral franchise." *Beer v. United States*, 425 U.S. 130, 141, 96 S.Ct. 1357, 1364, 47 L.Ed.2d 629 (1976). This "nonretrogression" interpretation has repeatedly been reasserted by the Supreme Court, most recently in *Miller v. Johnson*, —— U.S. ——, ——, 115 S.Ct. 2475, 2493, 132 L.Ed.2d 762 (1995).

This formulation relates directly to section 5's function. Section 5 was enacted in response to the efforts of jurisdictions to avoid compliance with the Voting Rights Act by adopting new, violative schemes as quickly as the old ones could be struck down. *See Beer*, 425 U.S. at 140, 96 S.Ct. at 1363. " 'By freezing election procedures in the covered areas unless the changes can be shown to be nondiscriminatory,' section 5 ensures that a plaintiff seeking to challenge an existing voting scheme in federal court under section 2 will have a stationary target to attack." *New York v. United States*, 874 F. Supp. 394, 400 (D.D.C.

---

possess good moral character, or (4) prove his qualifications by the voucher of registered voters or members of any other class. *Id.* § 1973b(c). The Bossier Parish School Board is indisputably a "covered jurisdiction."

1994) (quoting *Beer*, 425 U.S. at 140, 96 S.Ct. at 1363 (internal citations omitted)).

Section 2 of the Voting Rights Act uses plainly different language and serves a different function from that of section 5. Under section 2, a "voting qualification or prerequisite to voting or standard, practice, or procedure" in any political subdivision (not just a covered jurisdiction) may be challenged where it "results in a denial or abridgement of the right of any citizen of the United States to vote on account of race or color." 42 U.S.C. § 1973(a). Subsection (b) of section 2 provides that a voting procedure has the prohibited result where

> based on the totality of circumstances, it is shown that the political processes leading to nomination or election in the State or political subdivison are not equally open to participation by members of a class of citizens protected by subsection (a) of this section in that its members have less opportunity than other members of the electorate to participate in the political process and to elect representatives of their choice.

Id. § 1973(b). Subsection (b) contains a different standard from the retrogression standard found by the Supreme Court in section 5; as courts have since recognized, section 2 can be violated without any discriminatory purpose and irrespective of whether the disputed voting practice is better or worse than whatever it is meant to replace. *See Thornburg v. Gingles*, 478 U.S. 30, 42-47, 106 S.Ct. 2752, 2761-64, 92 L.Ed. 2d 25 (1986). Sections 2 and 5 are substantially different, both on their face and in the manner in which they have been interpreted and applied. *See Holder v. Hall*, —— U.S. ——, ——, 114 S.Ct. 2581, 2587,

129 L.Ed.2d 687 (1994) ("To be sure, if the structure and purpose of section 2 mirrored that of section 5, then the case for interpreting sections 2 and 5 to have the same application in all cases would be convincing. But the two sections differ in structure, purpose, and application." (footnote omitted)).

Moreover, the two sections differ as to the allocation of the burden of proof. In an action under section 5, the burden of proof is on the political subdivision seeking to enact a voting change. In a section 2 action, on the other hand, the burden of proof is on the party challenging a voting practice. *See, e.g., Hall v. Holder*, 955 F.2d 1563, 1573-74 (11th Cir.1992), *rev'd on other grounds*, —— U.S. ——, 114 S.Ct. 2581, 129 L.Ed.2d 687 (1994); *Solomon v. Liberty County*, 899 F.2d 1012, 1036 (11th Cir. 1990) (*en banc*) (Tjoflat, J., specially concurring); *cert. denied*, 498 U.S. 1023, 111 S.Ct. 670, 112 L.Ed. 2d 663 (1991); *see also Burton v. Sheheen*, 793 F. Supp. 1329, 1351-52 (D.S.C.1992) (declining to import section 2 into section 5 because, inter alia, of the differing burdens of proof), vacated on other grounds sub nom., *Statewide Reapportionment Advisory Comm. v. Theodore*, —— U.S. ——, 113 S.Ct. 2954, 125 L.Ed.2d 656 (1993); *City of Port Arthur v. United States*, 517 F.Supp. 987, 1005 n. 119 (D.D.C.1981) (rejecting claim that section 2 action can collaterally estop section 5 action because, inter alia, burdens of proof in each case are different), *aff'd*, 459 U.S. 159, 103 S.Ct. 530, 74 L.Ed.2d 334 (1992). That crucial procedural difference strongly suggests the inappropriateness of importing section 2 standards into section 5.

Defendant's reliance on the legislative history of the amendments to section 2 is similarly unavailing.

Where the language of a statutory regime is unambiguous, as it is here, we need not resort to that regime's legislative history. *See Connecticut Nat'l Bank v. Germain*, 503 U.S. 249, 253-54, 112 S.Ct. 1146, 1149, 117 L.Ed.2d 391 (1992). Even if the language of sections 2 and 5 did not plainly contemplate two different and independent inquiries, we would not be persuaded that what little legislative history defendant has discovered is sufficient to justify the radical expansion of an already significant encroachment on the prerogatives of States and their subdivisions. Defendant bases its recourse to legislative history in a footnote from the Senate Report that accompanied the 1982 amendments to section 2: "In light of the amendment to Section 2, it is intended that a Section 5 objection also follow if a new voting procedure itself so discriminates as to violate Section 2." S.REP. No. 97-417, 97th Cong., 2d Sess. at 12 n. 31 (1982) U.S. Code Cong. & Admin.News 1982 pp. 177, 189. Defendant also provides quotes to this effect from two sponsors of the 1982 amendments. The footnote appears in a report that accompanied the 1982 overhaul of section 2 that was precipitated by and intended to repudiate *Mobile v. Bolden*, 446 U.S. 55, 100 S.Ct. 1490, 64 L.Ed.2d 47 (1980). *Georgia v. Reno*, 881 F.Supp. 7, 13 (D.D.C.1995). In *Mobile*, a plurality of the Supreme Court held that proof of discriminatory purpose was required for a section 2 violation. "The [footnote] cited by the defendants was intended merely to emphasize that proof of the requisite unlawful effect is in itself sufficient under either section, regardless of motive." *Id.* At that time, section 2 was wholly rewritten to provide that no proof of discriminatory purpose is required in actions brought under it; section 5 remained—and

remains today—as it had been written in 1975. In the face of the palpably different standards plainly embodied in sections 2 and 5, we think it not plausible that Congress would indicate its desire to raise the hurdle to preclearance by adding the requirements of section 2 to section 5 in a Senate Report footnote. *Accord Arizona v. Reno*, 887 F.Supp. 318 (D.D.C. 1995). Had Congress plainly expressed this intention, we would be bound to follow. It did not and we are not.

The Department argues in its brief—although it appeared to retreat from this contention at closing argument—that an additional reason for the court to import section 2 into section 5 is that the Department of Justice has promulgated regulations stating that preclearance under section 5 ought to be denied where the proposed voting change violates section 2. *See* 28 C.F.R. § 51.55(b)(2) ("In those instances in which the Attorney General concludes that, as proposed, the submitted change is free of discriminatory purpose and retrogressive effect, but also concludes that a bar to implementation of the change is necessary to prevent a clear violation of amended section 2, the Attorney General shall withhold section 5 preclearance."). The Department asserts that "the Attorney General's interpretations of the Act are entitled to great deference." [Def. Br. at 31.] Wherever else the Attorney General's interpretation of section 5 of the Voting Rights Act may be entitled to deference, it certainly is not in this court. We will not defer to the Attorney General where, under the statute, an action seeking preclearance may be brought here in the first instance. *See Litton Fin. Printing Div. v. NLRB*, 501 U.S. 190, 203, 111 S.Ct. 2215, 2223, 115 L.Ed.2d 177 (1991) (citing *Local Union 1395, Int'l*

Brotherhood of Elec. Workers v. NLRB, 797 F.2d 1027, 1030-31 (D.C.Cir.1986)); *Kelley v. EPA*, 15 F.3d 1100, 1108 (D.C.Cir.1994) ("Even if an agency enjoys authority to determine such a legal issue administratively, deference is withheld if a private party can bring the issue independently to federal court under a private right of action."), *cert. denied sub nom., American Bankers Ass'n v. Kelley*, —— U.S. ——, 115 S.Ct. 900, 130 L.Ed.2d 784 (1995); *cf. Michigan Citizens for an Indep. Press v. Thornburgh*, 868 F.2d 1285, 1293 (D.C.Cir.), *aff'd*, 493 U.S. 38, 110 S.Ct. 398, 107 L.Ed.2d 277 (1989).

As we have noted, all courts to have considered the question have decided that section 2 may not be imported in section 5. *See Texas v. United States*, Civ. Act. No. 94-1529, Mem. Op. at 1-3 (D.D.C. July 10, 1995); *Arizona v. Reno*, 887 F.Supp. at 320-21; *Georgia v. Reno*, 881 F.Supp. at 13-14; *New York v. United States*, 874 F.Supp. 394 (D.D.C.1994); *see also Burton v. Sheheen*, 793 F.Supp. at 1350-53. Defendant would distinguish these cases, insisting that the other panels refused to import section 2 into section 5 cases because the only alleged section 2 violation was the addition of judgeships to an already existing, already violative system for the election of judges.[9] *See Texas*; *Arizona*; *Georgia*; *New York*.

[9] Defendant also argues that these cases are wrongly decided and that as "the decisions of co-equal panels of this Court do not constitute binding precedent on this Court." [Def. Br. at 33.] Although we need not be bound by the decisions of co-equal panels, *see In re Korean Air Lines Disaster*, 829 F.2d 1171, 1176 (D.C.Cir.1987), *aff'd sub nom. Chan v. Korean Air Lines, Ltd.*, 490 U.S. 122, 109 S.Ct. 1676, 104 L.Ed.2d 113 (1989), we certainly can be persuaded by them, particularly given the three-judge constitution of these panels

[Def.Br. at 34.] In this case, defendant contends that the proposed voting change is itself a violation of section 2 and that preclearance must therefore be denied. We are not persuaded. The reasoning used by the prior courts is just as applicable here, regardless of whether a given voting change is styled as an addition to a system that allegedly violates section 2 or a violation of section 2 itself. The statute does not provide for importation of section 2 into section 5, and the particular circumstances of a given section 5 preclearance action can make no difference whatsoever.

In its discussion of the importation of section 2 into section 5, defendant makes no mention of *Miller v. Johnson*. In *Miller*, the Attorney General denied preclearance for the Georgia General Assembly's congressional redistricting plan until it provided for three majority-black districts. —— U.S. at ——, 115 S.Ct. at 2489. In finding that the General Assembly had made race the "predominant factor" in its redistricting and thereby violated the Equal Protection Clause, the Court held that the manner in which the Attorney General had employed section 5 of the Voting Rights Act was "insupportable," and that the Attorney General's incorrect interpretation of section 5 could not be a compelling state interest sufficient to survive strict scrutiny. *Id.* —— U.S. at ——, 115 S.Ct. at 2492. Although much of the discussion in *Miller* concerns the Equal Protection clause, *Miller* is very much a statutory interpretation case. The Supreme Court, rather than decide the constitutional

---

and the fact that, in this curious corner of the law, the only entity besides co-equal panels of this court that can ever consider these questions is the Supreme Court.

question of whether compliance with the Voting Rights Act could serve as a compelling interest, expressly repudiated the Department's interpretation of section 5. *Id.* —— U.S. at ——-——, 115 S.Ct. at 2490-91. The Court noted that the purpose of section 5 is to avoid retrogression in the position of minority voters, and stated that the "Justice Department's maximization policy seems quite far removed from this purpose." *Id.* —— U.S. at ——, 115 S.Ct. at 2493. "In utilizing § 5 to require States to create majority-minority districts wherever possible, the Department of Justice expanded its authority under the statute beyond what Congress intended and we have upheld." *Id.* The Supreme Court further observed that it had upheld section 5 in *South Carolina v. Katzenbach*, 383 U.S. 301, 86 S.Ct. 803, 15 L.Ed.2d 769 (1966), as a

> necessary and constitutional response to some states' "extraordinary stratagem[s] of contriving new rules of various kinds for the sole purpose of perpetuating voting discrimination in the face of adverse federal court decrees." . . . But [its] belief in *Katzenbach* that the federalism costs exacted by § 5 preclearance could be justified by those extraordinary circumstances does not mean they can be justified in the circumstances of this case.[10]

---

[10] The federalism costs of section 5 (even without the importation of section 2) have been noted throughout its history. *See Georgia v. United States*, 411 U.S. 526, 545, 93 S.Ct. 1702, 1713, 36 L.Ed.2d 472 (1973) (Powell, J., dissenting) ("It is indeed a serious intrusion, incompatible with the basic structure of our system, for federal authorities to compel a State to submit its legislation for advance review."); *South*

Id. (*quoting Katzenbach*, 383 U.S. at 335, 86 S.Ct. at 822).

Although *Miller* makes no explicit reference to the injection of section 2 into section 5, the import of the opinion on this issue is clear. So long as the standard for the "effect" prong of section 5 remains "nonretrogression," the only way for defendant to require the creation of additional majority-black districts before preclearance will be granted is to import the standards of section 2 into the section 5 preclearance process. The very language with which the Attorney General objected to the School Board's redistricting plan makes plain that section 2's standards informed the Attorney General's objection to the School Board's plan. *Miller*,[11] however, makes crystalline what was

---

Carolina v. Katzenbach, 383 U.S. at 359-60, 86 S.Ct. at 834 (Black, J., dissenting in part) ("[section] 5 which gives federal officials power to veto state laws they do not like is in direct conflict with the clear command of our Constitution that 'The United States shall guarantee to every State in this Union a Republican Form of Government' "); *Georgia v. Reno*, 881 F.Supp. at 13 n. 8 (noting that the "extraordinary nature of section 5" argued against importing section 2 into section 5).

[11] Compare the Attorney General's August 30, 1993 letter ("[T]he proposed plan, adopted by the parish police jury and recommended by the school board's consultant, *would appear to provide no opportunity for black voters to elect a candidate of their choice* to the school board." (emphasis added)) with section 2 (a violation of section 2 is proved where "it is shown that the political processes leading to nomination or election in the State or political subdivision are not equally open to participation by [minority citizens] in that [they] have *less opportunity* than other members of the electorate to participate in the political process and to *elect representatives of their choice*" (emphasis added)).

already clear: section 2 and its standards have no place in a section 5 preclearance action. *See also Texas v. United States*, Civ.Act. No. 94-1529, Mem. Op. at 2-3.

In what may by now be a conditioned response, defendant argues that even if we decide that a section 2 action cannot be brought in a section 5 preclearance proceeding, we must still consider evidence of a section 2 violation as evidence of discriminatory purpose under section 5. We again disagree. As we have said, the statutory language sets forth differing standards for the two sections. The line cannot be blurred by allowing a defendant to do indirectly what it cannot do directly. The federalism costs already exacted by section 5 are seriously increased if, under the guise of "purpose" evidence, alleged section 2 violations must be countered by the political subdivision whenever it seeks preclearance. *See New York v. United States*, 874 F.Supp. at 399 ("Were we to accept defendant's theory that discriminatory intent may always be inferred from the existence of an allegedly discriminatory system, nearly every section 5 preclearance proceeding could potentially be transformed into full-blown section 2 litigation. We think a rule creating such a state of affairs both unwarranted and unwise."). And, *Miller* forecloses the permitting of section 2 evidence in a section 5 case. As a panel of this court recently noted,

> the Court [in *Miller*] reaffirmed that the "purpose" prong of section 5 must be analyzed within the context of section 5's purpose, which "has always been to insure that no voting-procedure changes would be made that would lead to a retrogression in the position of racial minorities

with respect to their effective exercise of the electoral franchise."

Texas v. United States, Civ.Act. No. 94-1529, Mem. Op. at 2 (July 10, 1995) (quoting *Miller*, —— U.S. at ——, 115 S.Ct. at 2493). Given the variety of good reasons not to import section 2 into section 5, we will not permit section 2 evidence to prove discriminatory purpose under section 5.[12]

B.

The parties agree that the proposed redistricting will not result in retrogression of minority voting strength in Bossier Parish, and thus, that the "effect" prong of Section 5 is not in issue. The statute requires a covered political subdivision seeking a declatory judgment to prove that the proposed voting change "does not have the purpose *and* will not have the effect of denying or abridging the right to vote." 42 U.S.C. § 1973c (emphasis added).

Plaintiff bears the burden of proving that it did not adopt the Police Jury plan with a discriminatory purpose. *Rome v. United States*, 446 U.S. 156, 183,

[12] At closing argument, defendant's counsel was presented with the question of whether a school board that affirmatively decides not to take race into account in any way could be found to have violated section 5. Counsel stated that a school board with the history and context of the Bossier Parish School Board declined to take race into account would indeed violate section 5. This strikes us as double counting. The reason the Bossier Parish School Board is subject to section 5 at all is, at least in part, because of its history and context. Now that it is subject to section 5, defendant would again cite the School Board's history as a reason to saddle it with the additional burden of affirmatively taking race into account in order to prove that it did not have the proscribed purpose.

100 S.Ct. 1548, 1565, 64 L.Ed.2d 119 (1980) ("Under [section] 5, the city bears the burden of proving lack of discriminatory purpose and effect."). All courts agree that the entity seeking preclearance has the burden of proving that the proposed change has neither a discriminatory effect nor a discriminatory purpose. How this plays itself out in litigation has been left largely unexplored. But it must be recognized that placing a burden of proving nondiscrimination on the plaintiff is anomalous under our law; the plaintiff is put in the position of proving a negative.[13]

Courts have devised complex burden-shifting regimes for litigation under Title VII and section 2 of the Voting Rights Act. In an action under Title VII, a plaintiff complaining of discrimination in the employment context must set forth a prima facie case of discrimination. At that point, the burden shifts to the employer to prove that the complained-of employment action was undertaken for other, nondiscriminatory reasons. The burden then shifts back to the plaintiff to prove that the employer's offered reasons are pretextual. *See, e.g., Johnson v. Transportation Agency*, 480 U.S. 616, 628, 107 S.Ct. 1442, 1450, 94 L.Ed.2d 615 (1987); *McDonnell Douglas Corp. v. Green*, 411 U.S. 792, 802, 93 S.Ct. 1817, 1824, 36 L.Ed.2d 668 (1973). Similarly, courts in section 2 cases have held that once the plaintiff establishes a prima facie case of vote dilution, the burden shifts to the political subdivision to prove that the voting

[13] It is particularly anomalous where the voting change has no retrogressive effect and the political subdivision thus bears the burden of proving that when it did nothing bad, it did so with a non-bad motive.

regime does not result in, or have as its purpose, discrimination. *See, e.g., Hall v. Holder*, 955 F.2d 1563, 1573-74 (11th Cir.1992), *rev'd on other grounds*, —— U.S. ——, 114 S.Ct. 2581, 129 L.Ed.2d 687 (1994); *Solomon v. Liberty County*, 899 F.2d 1012, 1036 (11th Cir.1990) (*en banc*) (Tjoflat, J., specially concurring). In actions under both Title VII and section 2, the burden-shifting regimes were enacted in order to alleviate the difficulty for plaintiffs of proving that defendants acted with discriminatory intent. These procedural services thus do not appear appropriate to a section 5 case.

To be sure, something like a burden shifting must occur in this, as in every other, civil case. Once the Board makes out its prima facie case, it is entitled to preclearance unless its prima facie case is rebutted. *See Director, Office of Workers' Compensation Programs, Dept. of Labor v. Greenwich Collieries*, —— U.S. ——, ——, 114 S.Ct. 2251, 2259, 129 L.Ed.2d 221 (1994) ("[W]hen the party with the burden of persuasion establishes a prima facie case supported by 'credible and credited evidence,' it must either be rebutted or accepted as true"). If it is rebutted, then we must weigh the School Board's evidence against that proffered on the other side. If the evidence is equally convincing on either side, the School Board—bearing the risk of nonpersuasion—must lose. *See McCain v. Lybrand*, 465 U.S. 236, 257, 104 S.Ct. 1037, 1050, 79 L.Ed.2d 271 (1984) (in the preclearance process, "the burden of proof (the risk of nonpersuasion) is placed upon the covered jurisdiction"). If, however, the School Board's evidence is more persuasive than the evidence proffered against it, the School Board is entitled to preclearance. To make out a *prima facie* case for preclearance, the School Board

must demonstrate that the proposed change will have no retrogressive effect, and that the change was undertaken without a discriminatory purpose. Proof of nondiscriminatory purpose must include "legitimate reasons" for settling on the given change. *Richmond v. United States*, 422 U.S. 358, 375, 95 S.Ct. 2296, 2306, 45 L.Ed.2d 245 (1975). When the *prima facie* case has been made by the School Board, defendant must offer evidence in rebuttal in order to prevent preclearance.[14]

The School Board has offered a host of nondiscriminatory reasons for adopting the Police Jury plan. We are satisfied that at least two of these are "legitimate, nondiscriminatory motives," *New York*, 874 F.Supp. at 400.[15]

---

[14] A panel of this court recently stated that, in order to prove that it has not acted with the prohibited intent, the section 5 plaintiff, "[a]s a practical matter," must come forward with evidence of legitimate, nondiscriminatory motives for the proposed changes to the voting laws. In addition, the plaintiff must furnish some affirmative evidence that the proposed changes were not motivated by a discriminatory purpose. Once the section 5 plaintiff has made such a showing, the burden shifts to the Attorney General, as the party resisting preclearance, to provide some evidence of a discriminatory purpose on the part of the legislators who seek to make the change. In the absence of such a showing, the section 5 plaintiff will be found to have carried its burden of establishing a lack of discriminatory purpose. *New York v. United States*, 874 F.Supp. at 400. That opinion, unfortunately, did not cite any authority for this division of the burden of proof.

[15] In the course of litigation, the School Board has offered several reasons for its adoption of the Police Jury plan that clearly were not real reasons. At one point, the School Board maintained that it adopted the plan (on October 1, 1992)

The Police Jury plan offered the twin attractions of guaranteed preclearance and easy implementation (because no precinct lines would need redrawing). The School Board did not like the Police Jury plan when it was first presented to them, and there were certainly reasons not to. The Police Jury plan wreaked havoc with the incumbencies of four of the School Board members and was not drawn with school locations in mind. When, however, the redistricting process began to cause agitation within the black community, and when it became obvious that any plan adopted by the School Board would give rise to controversy and division (and we find that by the time the NAACP's redistricting plan had been presented to the School Board, the Board could very reasonably foresee this), the Police Jury plan became, as Board member Myrick described it, "expedient." Any port will do in a storm, and when the clouds over the School Board's redistricting process began to grow ominous, the *only* close port was the already precleared Police Jury plan.

Defendant and defendant-intervenors contend that the Police Jury plan itself was precleared by the Attorney General only because relevant information was withheld from the Attorney General. In order for this to be evidence that the School Board adopted the Police Jury plan with an impermissible purpose, the School Board would have to have known that such information had been withheld from the Attorney General, and that but for that withholding, the Attorney General would not have precleared the Police Jury plan. We know of no evidence even suggesting

---

to avoid running afoul of *Shaw v. Reno*, —— U.S. ——, 113 S.Ct. 2816, 125 L.Ed.2d 511 (1993) (decided June 28, 1993).

the School Board had any knowledge that the Police Jury plan had been precleared illegitimately if in fact it had been.

Further, the Police Jury plan would require no splitting of precincts. While the evidence on the effect of a school board's efforts to redistrict in a way that splits precincts is confused, what is uncontroverted is that changing precincts is neither guaranteed nor free. The NAACP plan presented to the School Board —the only other plan available to the school board at the time—split at least 46 precincts. Defendant-intervenors' witness, David Creed, who testified that precinct-splitting was quite common and that he himself had drawn several redistricting plans that split precincts, [D-I Exh. F at 2-3], had never drawn a plan that split more than eight precincts. [Tr. II, at 119.] Splitting precincts would have required assistance from the Police Jury—a body that had rebuffed the School Board's earlier overtures for coordinated efforts. And, the splitting of precincts would have cost money. Evidence was presented that each precinct split would cost $850, and even if this number was substantially overstated, no one suggests that precincts can be split for free. When the School Board began the redistricting process, it likely anticipated the necessity of splitting some precincts. It hired the Police Jury's cartographer with the expectation that he would spend a substantial amount of time on the project, and it was given maps of the then-existing precincts and told it would have to work with the Police Jury with respect to the precincts. Nonetheless, the School Board entirely reasonably could have, when faced with the NAACP's plan, arrived quickly at the conclusion that zero precinct splits was significantly more desirable than 46.

Moreover, in the midst of the controversy, at the behest of the black community, and over the "bitter opposition" of some white constituents, the School Board itself appointed a black member to its only vacant seat in time to participate in and vote on the adoption of the Police Jury plan. Defendant tries to minimize this fact by noting that the vote was only six to five, that Jerome Blunt was appointed to a district that was 89% white, and that Blunt promptly lost in a special election six months later. That Blunt was appointed by a bare majority tells us nothing more than that at least a majority of the white Board members were responsive to the black community and were not opposed to black representation on the School Board. That Blunt lost his next election cannot, we think, be fairly laid at the School Board's door, particularly given that the district to which he was appointed—again, at the behest of George Price and others—was the only one with a vacancy. This appointment, particularly when its timing and context are considered, indicates that a majority of the white Board members not only were not opposed to black representation on the School Board, but affirmatively brought it about for the first time in Parish history.

The School Board thus has presented a *prima facie* case for preclearance. Defendant seeks to rebut this case by presenting what it styles as "direct" and "indirect" evidence of discriminatory purpose.

The "direct" evidence presented by defendant and defendant-intervenors consists of the alleged statements of three School Board members. We conclude that none of the statements attributed to these Board members, if they were in fact made, show that the Board acted with a discriminatory motivation. The

first statement offered by defendant is perhaps the most troubling. S.P. Davis, an attorney representing a plaintiff-intervenor in the *Lemon* suit, testified that Board member Henry Burns told him that, while Burns himself had no opposition to the idea, other members of the Board were "hostile to black representation on the School Board."[18] Plaintiffs did not cross-examine Davis on this point, so we do not know more specifically what Davis understood Burns to mean by "black representation." The phrase is subject to at least two interpretations. We would be troubled indeed if Burns was referring to hostility on the part of other Board members to the presence of black persons as members of the School Board. But, because at least six of the School Board members proved their lack of hostility to this sort of black representation by appointing a black Board member, we do not believe that Burns meant this. If Burns meant, by "black representation," that other members of the School Board were opposed to the intentional drawing of majority-black districts in order to ensure black representation on the Board, that is hardly an indication of discriminatory purpose unless section 5 imposes an affirmative obligation to draw additional majority-black districts. There are a host of entirely legitimate reasons to oppose this sort of district-drawing. A Board member could, for example, be opposed to districts that split numerous precincts or that violated traditional districting principles.

Board member Barry Musgrove's alleged statement to George Price that, while Musgrove was not per-

[18] We note the difficulty involved in giving weight to testimony as to an out-of-court statement by a third party concerning the mental state of other, unnamed third parties.

sonally opposed, other Board members were hostile to drawing majority-black districts is also relied upon by defendant. Musgrove denies making this statement, [Tr. I, at 56.], but we will assume for this analysis that he said what Price says he said. But again, this statement is not evidence of discriminatory purpose. A Board member could have any number of perfectly legitimate reasons to oppose the drawing of majority-black districts, particularly in the manner of the NAACP plan. Without more than Price's testimony, we will not assume the worst and credit the unnamed School Board members with an untoward motivation when the statement lends itself just as easily to a nondiscriminatory interpretation.

The last Board-member statement emphasized by defendant is that of Thomas Myrick, as testified to by intervenors George Price and Thelma Harry, that Myrick would not let his seat be taken. But, we do not attribute a racist motivation to the perfectly understandable expression by an incumbent of the strong desire not to have his district so changed that his constituency is obliterated. Even if Myrick's statement was an indication of a discriminatory purpose on Myrick's part—which we do not think it was —on this record it would be inappropriate to attribute such a purpose to the other nine members of the Board who voted to adopt the Police Jury plan.[17]

---

[17] When asked at oral argument for the best evidence of discriminatory purpose, counsel for defendant-intervenors pointed to the remarks of the school board members. Our dissenting colleague thinks little of this evidence: "These statements standing alone would certainly be insufficient to show discriminatory purpose." Dissent at 459 [App., *infra*, 53a].

The "indirect" evidence defendant most heavily relies upon is the the "sequence of events leading to the school board's adoption of the police jury plan." [Def. Br. at 15.] Defendant argues that these events raise an inference that the plan was adopted with a discriminatory purpose. Defendant notes that when the Police Jury plan was first presented to the Board, the Board declined to adopt it, in part because it pitted two pairs of incumbents against each other. Defendant also emphasizes the Board's unwillingness to permit participation in the redistricting process by George Price and the NAACP; most of the redistricting work done by the Board was not done publicly. And, defendant argues, and regards as the nail in the School Board's coffin, that the Board "rushed to adopt the police jury plan" only after it "was confronted with the NAACP's plan." [Def. Br. at 18.] If the only evidence before us were that summarized here and relied on so heavily by the defendant, we would still have difficulty following its inferential leap. We think that assuming that the quick rejection of the NAACP plan is probative of a discriminatory purpose requires at least that the Board have regarded the NAACP plan as a plausible plan. We have no evidence that the plan was, as an objective matter, plausible (after all, it split 46 precincts and is no longer seriously put forward by either defendant or defendant-intervenors). And, we have no indication that the School Board itself thought the plan plausible. The existence of the NAACP plan demonstrated to the Board that its efforts to redistrict would be subject to exacting review and vociferous criticism. The swift selection of the only plan around that bore the imprimatur of the Attorney General

resembles not a brazen stroke in the name of racist redistricting but an understandable, if not necessarily laudable, retreat from a protracted and highly charged public battle. In light of this, and mindful of the Board's demonstrable willingness to *ensure* black representation on the Board (the creation of a majority-black district would not necessarily lead to the election of a black Board member, while the appointment of a black Board member unavoidably would), we think defendant and defendant-intervenors' inference is unjustified.[18]

At the bottom, defendant's argument that the School Board's adoption of the Police Jury plan rather than something like the NAACP plan runs afoul of section 5 is indistinguishable from an argument rejected by the Court in *Miller v. Johnson*. Here, defendant argues that the School Board has failed to provide an adequate reason explaining why it declined to act on a proposal featuring two majority-black districts. In *Miller*, the "key to the Government's position . . . is and always has been that Georgia failed to proffer a nondiscriminatory purpose for its refusal in the first two submissions to take the steps necessary to create a third majority-minority district." —— U.S. at ——, 115 S. Ct. at 2492. The Supreme Court described this position as "insupportable" and stated that Georgia's adherence to "other

[18] Defendant mentions the continuing duty of the School Board to "remedy any remaining vestiges of the dual [school] system" under the order in *Lemon v. Bossier Parish School Board*, 240 F.Supp. 709 (W.D.La.1965), citing in particular the School Board's failure to maintain a biracial committee. We fail to see how this can be in any way related to the School Board's purpose in adopting the Police Jury plan.

districting principles instead of creating as many majority-minority districts as possible does not support an inference that the plan 'so discriminates on the basis of race or color as to violate the Constitution,' and thus cannot provide any basis under § 5 for the Justice Department's objection." *Id.* —— U.S. at ——, 115 S.Ct. at 2492 (citations omitted). We note that, in *Miller*, the Department of Justice denied preclearance until the Georgia Assembly had drawn three of 11 (or 27%) black majority districts in a State with a population that is 27% black. The Supreme Court agreed with the district court that the Department of Justice was engaged improperly in "black-maximization" on a theory of section 5 that the Supreme Court rejected. *Id. Here*, defendant denied preclearance noting that the Board had adopted the Police Jury plan when it had before it a plan that provided for two of 12 (or 18%) majority-black districts in a parish with a voting-age population that is 17.6% black. The key to defendant's position in this case, similarly, is that the School Board has not provided an adequate explanation for adopting the precleared Police Jury plan when it had before it the NAACP plan. As *Miller* makes clear, the adoption of one nonretrogressive plan rather than another nonretrogressive plan that contains more majority-black districts cannot by itself give rise to the inference of discriminatory purpose. Defendant here, as it did in *Miller*, pursues a theory the result of which is that no political subdivision presented with a plan that provides for x number of majority-black districts can ever adequately explain its reasons for adopting a plan that provides for x minus

n majority-black districts. The *Miller* Court rejected this theory of section 5, and we will not resuscitate it here.

Accordingly, we grant plaintiff Bossier Parish School Board the requested declaratory judgment.

[Maps included as an appendix to the opinion, but omitted from this appendix, are reproduced at 907 F.Supp. at 451-452; the originals are U.S. Exhs. 76A and 77F.]

KESSLER, District Judge, concurring in part and dissenting in part.

I concur in the holding of section III(A) of the majority opinion, namely, that section 2 of the Voting Rights Act may not be imported into section 5, 42 U.S.C. § 1973c. The statute does not compel such a reading, and all three-judge panels which have addressed the issue have concluded that section 2 requirements are not part of section 5. *See Texas v. United States*, Civ. No. 94-1529, Slip. Op. at 2 (D.D.C. Apr. 24, 1995); *Arizona v. Reno*, 887 F.Supp. 318, 321-22 (D.D.C.1995); *Georgia v. Reno*, 881 F. Supp. 7, 13-14 (D.D.C.1995); *New York v. United States*, 874 F.Supp. 394, 400 (D.D.C.1994). Sections 2 and 5 are undoubtedly "designed to complement and reinforce each other," *Arizona*, 887 F.Supp. at 321, but because they "differ in structure, purpose and application," *Holder v. Hall*, —— U.S. ——, ——, 114 S.Ct. 2581, 2587, 129 L.Ed.2d 687 (1994) (opinion of Kennedy, J.), the inquiries into each section are independent. Our colleagues in *Arizona*, recently considered the identical issue, and our holding today with respect to sections 2 and 5 is consistent with that opinion: The School Board may receive clearance under section 5 without demonstrating that its redistricting decision complies with section 2, and the Department may not withhold preclearance merely by establishing a section 2 violation. *See Arizona*, 887 F.Supp. at 323-24.

As to section III(B) of the majority opinion, however, I cannot in good conscience agree with the result reached by my two colleagues. The extensive record demonstrates that the Bossier Parish School Board did not act with "legitimate, nondiscriminatory motives." *New York*, 874 F.Supp. at 400. Rather,

in light of the impact the School Board's decision will have on the black community, the long history of discrimination and segregation in the Bossier Parish school system, the perpetuation of the exclusion of blacks from full participation in the electoral process, the significant timing of events that led up to the School Board's decision, and the noticeable departures from normal procedure, I am convinced that the School Board acted with "the purpose . . . [of] abridging the right to vote on account of race or color" in violation of the Voting Rights Act, 42 U.S.C. § 1973c. Accordingly, I would deny preclearance, and I respectfully dissent.

I.

Under section 5 of the Voting Rights Act, the burden of proving that the adopted plan does not have a discriminatory purpose rests squarely with the Bossier Parish School Board. *Rome v. United States*, 446 U.S. 156, 183 n. 18, 100 S.Ct. 1548, 1565 n. 18, 64 L.Ed.2d 119 (1980); *Georgia v. United States*, 411 U.S. 526, 538, 93 S.Ct. 1702, 1709, 36 L.Ed.2d 472 (1973). As stated succinctly by the majority, if the evidence is equally convincing on either side, the School Board—bearing the risk of nonpersuasion—must lose. Maj. Op. 446 [App., *supra*, 26a]; *see McCain v. Lybrand*, 465 U.S. 236, 257, 104 S.Ct. 1037, 1050, 79 L.Ed.2d 271 (1984) (in the preclearance process, "the burden of proof (the risk of nonpersuasion) is placed upon the covered jurisdiction").[1] In this case, the evidence is far

[1] While it may be true that this burden-shifting scheme is "anomalous under our law," Maj.Op. at 445-446 [App., *supra*, 25a], that should have no influence on our decision. Congress decides how to write the country's statutes, and Congress

from being equally convincing on either side. Not only does the evidence fail to prove absence of discriminatory purpose, it shows that racial purpose fueled the School Board's decision.

II.

The Supreme Court has told us that "[d]etermining whether invidious purpose was a motivating factor demands a sensitive inquiry into such circumstantial and direct evidence of intent as may be available." *Village of Arlington Heights v. Metropolitan Housing Development Corp.*, 429 U.S. 252, 266, 97 S.Ct. 555, 564, 50 L.Ed.2d 450 (1977). Such evidence, the Court stated, includes the impact the state's action has on protected minority groups; the historical background of the challenged decision; the specific sequence of events leading up to that decision; any substantive departure from the normal process; and the legislative or administrative history of the decision. *Id.* at 266-268, 97 S.Ct. at 564-565. *See also Busbee v. Smith*, 549 F.Supp. 494, 516-517 (1982), *aff'd* 459 U.S. 1166, 103 S.Ct. 809, 74 L.Ed.2d 1010 (1983). Applying this legal standard to the record before us, I find that the evidence demonstrates conclusively that the Bossier School Board acted with discriminatory purpose.[2]

clearly believed that the states' open defiance of the Equal Protection Clause—what the Supreme Court called an "insidious and pervasive evil,"—*South Carolina v. Katzenbach*, 383 U.S. 301, 309, 86 S.Ct. 803, 808, 15 L.Ed.2d 769 (1966), was serious enough to warrant the "federalism costs," Maj.Op. at 444 n.9 [App., *supra*, 21a n. 10], of the Voting Rights Act.

[2] It is telling that the majority never once refers to *Arlington Heights* when they evaluate the evidence submitted by

A.

In *Arlington Heights*, the Court said that when analyzing the government's purpose, "an important starting point . . . [is the] impact of an official action—whether it 'bears more heavily on one race than another.'" *Arlington Heights*, 429 U.S. at 266, 97 S.Ct. at 563 (quoting *Washington v. Davis*, 426 U.S. 229, 242, 96 S.Ct. 2040, 2049, 48 L.Ed.2d 597 (1976)). The Board's adoption of a redistricting plan with no majority-black districts undoubtedly "bears more heavily" on the black community in Bossier Parish than on the white community, because it effectively prevents black voters from electing candidates of their choice to the School Board.

In Bossier Parish, voting is racially polarized, Stips ¶¶ 181-196. No black person has ever been elected to the Bossier Parish School Board, Stip ¶ 153, despite the fact that 20.1% of the population of Bossier Parish is black, Stip ¶ 5, and almost 30% of its public schools are black. Stips ¶¶ 5, 134. Given this context, black voters may well require a majority-black district in order to have a fair chance of electing candidates of their choice. Further, "[b]ecause it is sensible to expect that at least some blacks would have been elected [to the Board], the fact that none have ever been elected is important evidence of purposeful exclusion." *Rogers v. Lodge*, 458 U.S. 613, 623-24, 102 S.Ct. 3272, 3279, 73 L.Ed.2d 1012 (1982). As

---

the Department and Intervenors. *See* Maj.Op. at 447-449 [App., *supra*, 29a-36a]. Indeed, the majority articulates no standard by which it decides whether "the School Board's evidence is more persuasive than the evidence proffered against it." Maj.Op. at 446 [App., *supra*, 26a].

one federal court of appeals noted, "nothing is as emphatic as zero." *United States v. Hinds County School Board*, 417 F.2d 852, 858 (5th Cir.1969). The fact is, the Board's plan presents the black minority of Bossier Parish with no realistic opportunity to elect any candidates of its choice to any of the board seats.

Moreover, as Defendants-Intervenors demonstrated, it was clearly possible to draw a redistricting plan for the Bossier Parish Schools with one or two majority-black districts, and still respect traditional districting principles.[3] The School Board admits that it is "obvious that a reasonably compact black-majority district could be drawn in Bossier City." Stip ¶ 36. But rather than consider either of the alternative proposals brought before it or direct their own cartographer to draft one, the School Board adopted a plan "which guaranteed that blacks would remain underrepresented on the [School Board] by comparison to their numerical strength in the enlarged community." *City of Port Arthur v. United States*, 517 F.Supp. 987, 1022 (D.D.C.1981), *aff'd*, 459 U.S. 159, 103 S.Ct. 530, 74 L.Ed.2d 334 (1982). This conscious decision to adopt a plan that effectively excludes minority voters from the political process is probative of discriminatory intent.

---

[3] In addition to the plan presented to the School Board on September 3, 1992, Defendant-Intervenors have presented two other plans that show it is possible to draw majority-black districts in Bossier Parish which are fully consistent with traditional districting principles.

B.

The Supreme Court has held specifically that "the historical background of the challenged decision" is properly part of the purpose inquiry under the Voting Rights Act. *Arlington Heights*, 429 U.S. at 267, 97 S.Ct. at 564. Here, the history of discrimination and racism in and out of the school system demonstrates that the School Board's vote was yet another chapter in its long-standing refusal to address the concerns of the black community of Bossier Parish. Evidence of historical discrimination "is relevant to drawing an inference of purposeful discrimination, particularly in cases such as this one where the evidence shows that discriminatory practices were commonly utilized . . . and that they were replaced by laws and practices which, though neutral on their face, serve to maintain the status quo." *Rogers*, 458 U.S. at 625, 102 S.Ct. at 3279.[4]

[4] The majority excludes evidence of historical discrimination in the Bossier Public Schools and Bossier Parish because it believes that such "evidence [is] relevant only to the section 2 inquiry." Maj.Op. at 440a, n. 5 [App., *supra*, 9a n.6]. In my view, the majority wrongly believes that once we decide that sections 2 and 5 are analytically distinct, we may not use evidence of historical discrimination (which is central to a section 2 inquiry) to decide the "purpose" prong of section 5. But as the panel recently explained in *Arizona v. Reno*, 887 F.Supp. at 323, nothing in the statute or case law leads to that conclusion. "Although the inquiry required under the purpose prong of section 5 extends into areas that would also be relevant in a section 2 proceeding," that does not mean that considering evidence of historical discrimination is "tantamount to launching a section 2 proceeding . . . under the guise of section 5." *Id.* at 323. More importantly, excluding evidence of historical discrimination contravenes the Supreme Court's explicit direction in *Arlington Heights*, where the Court stated that among the factors to consider in the "purpose" inquiry is the "historical background of the decision . . . particularly if it reveals a series of official actions taken for invidious purposes." 429 U.S. at 268, 97 S.Ct. at 564. In short, the majority ignores the standard the Supreme Court established to govern precisely the type of inquiry we must make in this case.

It is undisputed that Louisiana and the Bossier school system have a history of segregation and racial discrimination predating the Civil War. Following the passage of the Thirteenth Amendment, Louisiana began what the Supreme Court has called "unremitting and ingenious" defiance of the Constitution, *South Carolina v. Katzenbach*, 383 U.S. 301, 309, 86 S.Ct. 803, 808, 15 L.Ed.2d 769 (1966), by passing laws designed to disenfranchise black voters. Stip ¶ 216. One law prohibited elected officials from helping illiterates. Another statute required all voters to use complex application forms, prohibited explanation of application questions, and facilitated wholesale purges by party officials of voters who managed to register successfully. *Id.* The new laws reduced black registration by 90 percent in the state, leaving only 10 percent of adult black males eligible to vote. Stip ¶ 216. Two years later, in 1889, Louisiana's Constitutional Convention imposed a "grandfather" clause and educational and property qualifications for voter registration. Both provisions were designed to limit black political participation, Stip ¶ 217, and both succeeded: black males constituted just 4 percent of the state's population. *See United States v. State of Louisiana*, 225 F.Supp. 353, 373 (E.D.La. 1963).

In 1921, pursuant to state law, the state Democratic party established an all-white primary, Stip

¶¶ 220, 222. That same year, the Legislature replaced the grandfather clause with a requirement that an applicant "give a reasonable interpretation" of any section of the federal or state constitution in order to vote. Stip ¶ 221. After the all-white primary was struck down by a federal court, the Democratic party adopted an anti-single-shot law, and a majority vote requirement for party officers. *Major v. Treen*, 574 F.Supp. 325, 341 (E.D.La.1983). The "reasonable interpretation" requirement was finally held unconstitutional by the United States Supreme Court in 1965. *Louisiana v. United States*, 380 U.S. 145, 85 S.Ct. 817, 13 L.Ed.2d 709 (1965).

In the Bossier school system it was much of the same. Despite the Supreme Court's decision in *Brown v. Board of Education*, 347 U.S. 483, 74 S.Ct. 686, 98 L.Ed. 873 (1954), *de jure* segregation was the rule in Louisiana public schools, and federal courts were forced to order school districts to comply with federal law. Stip ¶ 235. Since 1965, the Bossier Parish School Board has been the defendant in *Lemon v. Bossier Parish School Board*, Civ.Act. No. 10,687 (W.D.La., filed Dec. 2, 1964) in which it was found liable for intentionally segregating the public schools in violation of the Fourteenth Amendment. *Lemon v. Bossier Parish Sch. Bd.*, 240 F.Supp. 709 (W.D.La. 1965), *aff'd*, 370 F.2d 847 (5th Cir.1967), *cert. denied* 388 U.S. 911, 87 S.Ct. 2116, 18 L.Ed.2d 1350 (1967).

Throughout the late 1960's and early 1970's, the school board sought to limit or evade its desegregation obligations. At one point, the School Board sought to assign black children of Barksdale Air Force Base personnel to black schools without a right to transfer to white schools, claiming that they were "federal

children" and not within the "jurisdiction" of the school district. Stip ¶ 237. Circuit Judge Wisdom rejected the School Board's "new and bizarre excuse" for rationalizing its denial of the constitutional right of black school children to equal educational opportunities. *Bossier Parish School Board v. Lemon*, 370 F.2d 847, 849 (5th Cir.1967).

In 1969, the Fifth Circuit rejected the school board's "freedom of choice" plan in *Hall v. St. Helena Parish Sch. Bd.*, 417 F.2d 801 (5th Cir.1969), and in 1970, after "protracted litigation," rejected another inadequate remedial plan proposed by the district in *Lemon v. Bossier Parish Sch. Bd.*, 421 F.2d 121 (5th Cir.1969).

In 1971, the court held unconstitutional the School Board's plan to assign students to one of two schools in Plain Dealing based on their test scores. *Lemon v. Bossier Parish Sch. Bd.*, 444 F.2d 1400 (5th Cir. 1971). In 1979, the School Board filed a motion seeking a declaration of unitary status and a release from further court supervision. The motion was denied, and the school district has yet to be declared a unitary system. Stip ¶ 239. Since 1980, despite the School Board's continuing duty to desegregate, the number of elementary schools with predominately black enrollments has increased from one to four. To this day, the School Board remains under direct federal court order to remedy any remaining vestiges of segregation in its schools.

The Board has also failed to honor the *Lemon* court's order to maintain a Biracial Committee to "recommend to the School Board ways to attain and maintain a unitary system and to improve education in the parish." Stip ¶ 111. The committee met only 2 or 3 times, and only the black members attended.

For decades following the court's order, the Board ignored this requirement altogether. Stip ¶ 112. In 1993, the Board finally established a similar committee, but disbanded it after three months because, according to School Board Member Barry Musgrove, "the tone of the committee made up of the minority members of the committee quickly turned toward becoming involved in policy." Stip ¶ 116. What exactly the Committee was supposed to become involved in, if not policy, is unclear. What is clear is that the Board's unilateral dismantling of the Committee was in direct violation of a federal court order to address the concerns of the black community.

The School Board's adoption of the Police Jury plan must be evaluated in the framework of this long history of official discrimination. It may seem unduly harsh to consider racism and discrimination dating back to the Civil War, but this history reveals an insidious pattern which cannot be ignored, and must inform our decision today. Like the school boards and legislatures before it, the Bossier Parish School Board's actions effectively eliminate the black community from the political process. So long as black voters have no electoral power, they have no voice, and the School Board can safely ignore their concerns.

C.

The Supreme Court has told us that "the specific sequence of events leading up to the challenged decision may shed some light on the decisionmaker's purpose." *Arlington Heights*, 429 U.S. at 267, 97 S.Ct. at 564. Here, the sequence of events leading up to the adoption of the Police Jury plan supplies further proof of discriminatory purpose.

The redistricting process began in May, 1991, when the Board decided to develop its own plan rather than adopt the one accepted by the Police Jury. Given the fact that the next School Board election was not scheduled until October, 1994, there was no need for hasty Board action. The Board hired Gary Joiner, a cartographer, who had drawn the Police Jury plan. He was hired to perform 200-250 hours of work, far more time than would be needed simply to recreate the Police Jury plan. Stip ¶ 86. On July 29, 1991, the Police Jury plan was precleared by the Justice Department. On September 5, 1991, however, the School Board decided not to adopt the Police Jury plan, largely because it would pit incumbents against each other. Over the course of the next year, School Board members considered a number of redistricting options. Mr. Joiner met privately with School Board members and demonstrated different possibilities to them on his computer. Stip ¶ 96. These meetings were not open to the public nor were there any recorded minutes or published notice of the meetings.

While the School Board was meeting and planning in private, the black community was trying, unsuccessfully, to participate in public. In March of 1992, George Price, on behalf of a coalition of black community groups, wrote the School Board asking to participate in its redistricting process. Stip ¶ 93. Neither the Board nor the Superintendent responded to this request. *Id.* In August of 1992, Mr. Price sent another letter asking specifically to be involved in every aspect of the redistricting process. Again, no response. Stip ¶ 94.

Frustrated by the School Board's unresponsiveness, Price contacted the NAACP Redistricting Project in Baltimore. The Project developed a partial plan for

Price to present to the School Board that consisted of two majority-black districts. Stip ¶ 98. The plan did not show the other ten districts that made up the Parish. When Price showed this plan to a school district official, he was told that the plan was unacceptable because it only showed two districts. Price went back to the NAACP and a new plan was drawn up.

Then, on September 3, 1992, when Price appeared on behalf of the black community at a public hearing and presented a new plan showing all twelve districts, including two majority-black districts, the Board dismissed it summarily, claiming—incorrectly—that they could not consider any plan that split precinct lines.[5] Stip ¶ 102.

At its next meeting, on September 17, 1992, without any further consultation with its cartographer or attempt to address the concerns of the black community, the School Board passed a motion of intent to adopt the Police Jury plan, which had no majority-black districts. At that meeting, Mr. Price again presented the NAACP proposal. Stip ¶ 106. Instead of discussing the plan with Mr. Joiner, or asking him to further analyze the possibility of drawing black-majority districts without splitting precincts (the School Board's purported reason for rejecting the plan), the Board simply passed the motion of intent to adopt the Policy Jury plan at the next School Board meeting. *Id.*

One week later, on September 24, 1992, an overflow crowd attended a public hearing on the redistricting plan. Fifteen people spoke against the School Board's proposed plan, most of whom objected because it would dilute minority voting strength. Not a

[5] See discussion at pages 443-444, *infra* [App., *infra*, 56a-57a].

single person spoke in favor of the plan. Stip ¶ 108. At this hearing, Mr. Price presented the Board with a petition signed by more than 500 Bossier Parish citizens, asking the Board to consider an alternative redistricting plan. *Id.*

Despite the one-sided input from Bossier citizens, and despite the fact that the Board was under *no* time pressure to decide the issue, the Board voted one week later to adopt the Police Jury plan. As with the meetings of September 3 and September 17, the Board's minutes of the October 1, 1995 meeting reflect little substantive consideration of the Police Jury plan, other than to approve the Police Jury plan as quickly as possible.[6] Board Member Myrick testified that the Board adopted the plan that evening because it was "expedient."

The Police Jury plan only became "expedient" when the School Board was publicly confronted with alternative plans demonstrating that majority-black districts could be drawn, and demonstrating that political pressure from the black community was mounting to achieve such a result. The common-sense understanding of these events leads to one conclusion: The Board adopted the Police Jury plan—two years before the next election—in direct response to the presentation of a plan that created majority-black districts. Faced with growing frustration of the black community at being excluded from the electoral process, the only way for the School Board to ensure that no majority-black districts would be created was to quickly adopt the Police Jury plan and put the issue

[6] For example, the Board seems to have abandoned its concerns about the Police Jury plan pitting incumbents against each other.

to rest. This sequence of events of "public silence and private decisions,"[7] culminating in the Board's hasty decision, is evidence of the Board's discriminatory purpose.

D.

The fact that the Board adopted a plan which departs substantively from its earlier districting plans and which ignores factors it has usually considered of paramount concern, is probative of discriminatory purpose, "particularly if the factors usually considered important by the decision-maker strongly favor a decision contrary to the one reached." *Arlington Heights*, 429 U.S. at 267, 97 S.Ct. at 564. The most glaring example is that the adopted plan forced incumbents to run against each other. Incumbency protection has always, understandably, been a high priority for both the Police Jury and School Board. That was the reason there were different redistricting plans in effect for each entity during the 1980s. That was also the reason the Police Jury refused to conduct a joint redistricting effort with the school board after 1990.

Moreover, the plan adopted by the Board contravenes other traditional districting principles. For example, it creates one district containing almost half of the geographic area in the Parish. Stip ¶ 140. Several of its districts are not compact, according to the Board's own consultant. Stip ¶ 139. In addition, the plan creates election districts without any schools in them and ignores school attendance boundaries. Stip ¶ 141. Finally, the plan does not respect communities of interest in Bossier Parish. Stip ¶¶ 135-137.

[7] Def.-Int. Bf. at 20.

Perhaps if the Board had ignored one or two of these standard redistricting criteria, it would not be noteworthy, but when the Board's plan plainly violates a whole number of redistricting principles, we have further evidence from which to infer that the Board's decision was fueled by discriminatory purpose.

E.

In setting forth the evidentiary categories to be evaluated in determining whether invidious purpose was a motivating factor, the Supreme Court in *Arlington Heights* noted that its listing of such categories was not exhaustive. 429 U.S. at 268, 97 S.Ct. at 565. Thereafter, in *Rogers v. Lodge*, 458 U.S. 613, 102 S.Ct. 3272, 73 L.Ed.2d 1012 (1982), the Court considered additional political and sociological factors that underscored the state's discriminatory purpose. In *Rogers*, the Court struck down Burke County, Georgia's at-large election system, holding that it violated the Fourteenth and Fifteenth Amendments because the state had acted with discriminatory purpose. The Court considered important the fact that "lingering effects of past discrimination," caused socioeconomic disparity between whites and blacks. *Id.* 458 U.S. at 626, 102 S.Ct. at 3280 (citations omitted). The Court also said that it was important to consider the educational disparity between whites and blacks. *Id.* 458 U.S. at 624, 102 S.Ct. at 3279. Here, it is undisputed that black citizens in Bossier Parish suffer a markedly lower socioeconomic status than their white counterparts, and that the difference is traceable to the legacy of racial discrimination in the Parish. Stip ¶ 200.

According to the 1990 Census,[8] the poverty rate for blacks (44.7%) is nearly five times the rate for whites (9.1%). The per capita income of blacks ($5,260) is only 40% of that enjoyed by whites ($12,966). The unemployment rate for blacks age 16 and over (22.4%) is nearly four times that for whites. The percentage of blacks over 25 without a high school degree (40.6%) is over twice the rate of whites (16.7%). Only 4.8% of whites age 25 and older have less than a ninth grade education, while 22.8% of blacks in the same age category have less than a ninth grade education. Almost 84% of whites 25 years or older were at least high school graduates, compared to only 58.7% of blacks. Also, 17% of whites 25 years or older had at least four years of college, compared to only 8.1% of blacks. In 1990, only 2.9% of the white labor force were unemployed, while 9.1% of the black labor force was unemployed. Finally, whites are five times as likely to own a car as blacks, a significant fact in a rural parish where voting places may be distant from people's homes.

It is also undisputed that the depressed socioeconomic and educational levels of blacks within Bossier Parish make it hard for them to obtain necessary electoral information, organize, raise funds, campaign, register, and turn out to vote, and this in turn causes a depressed level of political participation for blacks within Bossier Parish. Stip. ¶ 213. Like the state representative in Burke County in *Rogers*, the School Board members in Bossier Parish "have retained a system which has minimized the ability of [Bossier Parish] Blacks to participate in the political

[8] Stip ¶¶ 204, 208, 211.

system." 458 U.S. at 626, 102 S.Ct. at 3280 (citations omitted).

Thus, the additional factors identified by the Supreme Court in *Rogers*, are met foursquare in this case. As the Court explained in *Rogers*, "[n]ecessarily, an invidious discriminatory purpose may often be inferred from the totality of the relevant facts, including the fact, if it is true, that the law bears more heavily on one race than another." 458 U.S. at 618, 102 S.Ct. at 3276 (quoting *Washington v. Davis*, 426 U.S. at 242, 96 S.Ct. at 2049).

F.

We also have before us statements made by three School Board members about minority representation on the Board. School Board member Henry Burns said that while he "personally favors having black representation on the board, other school board members oppose the idea." U.S.Exh. 106 ¶ 17. School Board member Barry Musgrove said that "while he sympathized with the concerns of the black community, there was nothing more he could do . . . on this issue because the Board was 'hostile' toward the idea of a black majority district." *Id.* And School Board member Thomas Myrick told George Price of the NAACP that "he had worked too hard to get [his] seat and that he would not stand by and 'let us take his seat away from him.'" U.S.Exh. 106 ¶ 29, Exh. E ¶ 19.

These statements standing alone would certainly be insufficient to show discriminatory purpose. However, considered in the context of the School Board's discriminatory past, the efforts to preserve segregation and exclude black representation from the Board,

the sequence of events leading up to the Board's decision, and the anomalous nature of the plan itself, the statements add further proof of improper motive. While the majority is correct that the statements are subject to different interpretations, Maj. Op. at 447-448 [App., *supra*, 30a-31a], given all the evidence previously set forth showing discriminatory purpose, and the efforts of the past fifty years to desegregate the schools, it seems fair to conclude that at least some School Board Members were openly "hostile" to black representation on the school board.[9]

* * * * *

[9] The majority argues that the appointment of Jerome Blunt to fill a vacant seat on the Board "proved [the Members'] lack of hostility to this sort of black representation." Maj.Op. at 447 [App., *supra*, 30a]. However, Mr. Blunt was appointed to represent a district that was only 11% black, and his short tenure on the job was a stark reminder of the highly polarized voting in Bossier Parish, *see* section II(A), *supra*. Mr. Blunt's chances of reelection were slight, and his short-lived appointment was a far-cry from the full tenure of an elected black school committee member. The majority notes, however, that the "timing and context" of Blunt's appointment indicate that the Board acted for legitimate reasons. Maj. Op. at 447 [App., *supra*, 30a]. The facts suggest the opposite. Blunt was appointed on September 17, 1992—squarely in the middle of the controversy surrounding the redistricting plans —at the very meeting where the Board adopted a motion of intent to adopt the Police Jury plan and after George Price had made his demands for a majority-black district. Certainly, Board members knew that adopting the Police Jury plan would ignite controversy in the black community. And on the very night of that decision, the School Board appointed a black to fill a seat that they knew he would be unable hold, hoping to quell the political furor over adoption of the Police Jury plan.

For all the foregoing reasons, the only conclusion that can be drawn from the evidence is that the Bossier School Board acted with discriminatory purpose. The adopted plan has a substantial negative impact on the black citizens of Bossier Parish. The sequence of events leading up to the decision show conclusively how the School Board excluded the black community from the redistricting process and rushed to adopt the Police Jury plan only when faced with an alternative plan that provided for black representation. The plan itself ignores and overrides a number of the School Board's normally paramount interests. And the statements of some School Board members certainly lend strength to the other evidence. "Justice is blind; but courts nevertheless do see what there is clearly to be seen."[10] We cannot blind ourselves to the reality of the situation and the record before us. The Bossier School Board acted with discriminatory purpose in adopting the Police Jury Plan.[11]

[10] *Laker Airways Limited v. Pan American World Airways*, 568 F.Supp. 811, 816 (D.D.C.1983). While Judge Harold Greene made this observation in a very different context (an antitrust case), its pithiness and wisdom apply beyond that context.

[11] Because of the paucity of public discussion about the Board's decision (except for those who opposed it), and because the Board left virtually no legislative history, we cannot assess the "minutes of its meetings, or reports." *Arlington Heights*, 429 U.S. at 268, 97 S.Ct. at 565. Given the considerable evidence showing discriminatory purpose, however, the Board's failure to document its decisionmaking process is certainly suspect.

III.

In the face of this considerable evidence, the School Board has offered several reasons for its adoption of the Police Jury plan. Even the majority admits that a number of these reasons "clearly were not the real reasons," Maj.Op. at 446 n. 14 [App., *supra*, 27a n. 15], *i.e.*, the School Board lied.

For example, at one point, the School Board argued that it adopted the Police Jury plan (on October 1, 1992) to comply with *Shaw v. Reno*, —— U.S. ——, 113 S.Ct. 2816, 125 L.Ed.2d 511 (1993) (decided June 28, 1993), which was decided nine months *after* the Board adopted its plan. Although the Board does not lie as fragrantly [*sic*] in its remaining rationales, they are equally unconvincing.

The School Board claims that it could not adopt any plan with majority-black districts because such a plan would require precinct-splitting, which violates state law and would be prohibitively expensive. The evidence shows conclusively, however, that throughout the redistricting process, the School Board was willing to split precincts to do just that, i.e., to split precincts so long as it was for the protection of incumbents. It was only *after* the black community presented its alternative plan that the School Board proffered the "no precinct-splitting" rationale.

The majority agrees that when "the School Board began the redistricting process, it likely anticipated the necessity of splitting some precincts." Maj.Op. at 447 [App., *supra*, 29a]. The School Board hired Mr. Joiner at the beginning of the process to develop the plan, fully intending that he would split precincts (that is why he needed between 200-250 hours to complete the job). At the September 5, 1991 School

Board meeting, the first School Board meeting after the Police Jury plan had been precleared by the Department, Mr. Joiner presented proposed maps that showed split precincts. Further, it is now undisputed by the School Board that splitting precincts does not violate state law. While the School Board itself may not split precincts, police juries have the authority to establish and modify precinct lines, Stip ¶¶ 13-23, and many do so when requested by a school board. The Bossier Parish Police Jury itself created 13 new precincts in 1991, Stip ¶ 60, and the School Board has stipulated that the Police Jury was currently considering consolidating some of its precincts for other reasons. Stip ¶ 61.

Once again, it was only after being presented with the black community's plan, and the possibility of a majority-black district in the ensuing election, that the Board totally reversed itself and "arrived quickly," Maj.Op. at 447 [App., *supra*, 29a], at the conclusion that it was *against* splitting districts. Nor did the School Board voice its concern about *too many* precinct splits causing higher election costs in its initial submission to the Department. U.S. Exh. 102 at 9 (testimony of Blunt). Moreover, the Board never estimated the cost of splitting precincts before it voted to adopt the Police Jury plan. *Id.* Obviously, "cost" did not actually motivate the School Board's decision at the time it was made. The focus of our inquiry is what motivated the Board *at the time of its decision*, not whether post-decision rationales would have been legitimate reasons. The Board's excuses on the significant subject of precinct-splitting are clearly not justified.

The final reason offered by the School Board is that the Police Jury plan guaranteed preclearance,

that is, the Department would approve the School Board's plan because it was identical to the Police Jury plan which was precleared on July 29, 1991. It is clear, however, that "guaranteed preclearance" was not the School Board's motive as it began the redistricting process, because if so, it would not have waited until October 1, 1992—almost 14 months later—to adopt the Police Jury plan. If guaranteed preclearance was what the Board wanted, it would have acted soon after the Police Jury plan was precleared by the Justice Department on July 29, 1991. As with the precinct-splitting issue, this rationale also surfaced only after the School Board was faced with alternative plans that could conceivably lead to majority-black districts and an elected black member.[12] The evidence shows that School Board members adopted the Police Jury plan not because it "guaranteed preclearance," but because given growing dissatisfaction in the black community, it was the only way to ensure that there would be no black majority districts.

The Board's rationales simply do not withstand a common-sense reading of the record. Some of the rationales are untrue on their face, and others do not bear even minimum scrutiny. Most of the alleged

[12] It is hard to accept the majority's unduly charitable characterization of this decision as nothing more than "an understandable, if not necessarily laudable, retreat from a highly charged public debate," Maj. Op. at 449 [App., *supra*, 34a], when the evidence shows overwhelmingly that the black community was excluded from that public debate. School Board members did more than simply retreat from a political debate; in the guise of "expediency," Dep. of Myrick, they excluded black citizens from the only process that would allow that community to elect a candidate of its choice.

justifications are absent from the public record, so the School Board asks us to accept their post-hoc rationalizations rather than focus on their motive at the time of the decision. "[I]nvidious purpose may often be inferred from the totality of the relevant facts." *Washington v. Davis*, 426 U.S. 229, 242, 96 S.Ct. 2040, 2048.

The evidence is clear that racial purpose was "*a* motivating factor in the [Board's] decision" to adopt the Police Jury plan. *Arlington Heights*, 429 U.S. at 265-266, 97 S.Ct. at 563 (emphasis added). The burden of proof is on the School Board to show absence of discriminatory purpose, *Rome v. United States*, 446 U.S. 156, 183 n. 18, 100 S.Ct. 1548, 1565 n. 18, 64 L.Ed.2d 119 (1980), and it has woefully failed to satisfy that burden. Its rationales are so flagrantly pretextual as to further corroborate the conclusion that the School Board acted with discriminatory purpose.

IV.

The School Board claims that the Supreme Court's recent decision in *Miller v. Johnson*, —— U.S. ——, 115 S.Ct. 2475, 132 L.Ed.2d 762 (1995), precludes it from adopting any majority-black districts because such districts would constitute "racial gerrymandering" in violation of the Equal Protection Clause. The School Board's reading of *Miller* is erroneous for a number of reasons.

First, this is simply not a *Miller* case. We do not have *any* plan with majority-black districts to evaluate, no less a plan where, as in *Miller*, "race was the overriding and predominant force in the districting determination." *Id.* —— U.S. at ——, 115 S.Ct. at

2485. Since the School Board chose to adopt the Police Jury plan, it would be sheer speculation on the basis of this record to determine whether "race was the predominant factor motivating," *id.* —— U.S. at ——, 115 S.Ct. at 2485, some other hypothetical redistricting plan. Defendant and Defendant-Intervenors are not even arguing that any particular plan should have been adopted by the School Board. How, in the absence of any concrete plan, can a court decide whether a plaintiff has proven that the government "subordinated traditional race-neutral districting principles, including but not limited to compactness, contiguity, [and] respect for political subdivisions or communities"? *Id.* —— U.S. at ——, 115 S.Ct. at 2488. The court would be speculating, and the prohibition against advisory opinions prohibits us from answering such hypothetical legal questions. *See Flast v. Cohen*, 392 U.S. 83, 96-97, 88 S.Ct. 1942, 1950-51, 20 L.Ed.2d 947 (1968) (such suits lack the "clash of adversary argument exploring every aspect of a multifaceted situation embracing conflicting and demanding interests").

The Court was extraordinarily sensitive in *Miller* "to the complex interplay of forces that enter a legislature's redistricting calculus." *Miller*, —— U.S. at ——, 115 S.Ct. at 2488. It recognized that legislatures engaged in this difficult process "will, for example, almost always be aware of racial demographics; but it does not follow that race predominates in the redistricting process." *Id.* (citations omitted). The Court also understood the delicate line-drawing that fact-finders would have to engage in:

> The distinction between being aware of racial considerations and being motivated by them may be difficult to make. This evidentiary difficulty, together with the sensitive nature of redistricting and the presumpton of good faith that must be accorded legislative enactments, requires courts to exercise extraordinary caution in adjudicating claims that a state has drawn district lines on the basis of race. The plaintiff's burden is to show, either through circumstantial evidence of a district's shape and demographics or more direct evidence going to legislative purpose, that race was the predominant factor motivating the legislature's decision . . .

Id.

It would be impossible, without an actual plan, without "circumstantial evidence of a district's shape and demographics," without a showing that "the legislature subordinated traditional race-neutral districting principles . . . to racial considerations," for a court to make the informed and sophisticated judgment called for by the Supreme Court in *Miller*. If and when the School Board does adopt a plan with one or more majority-black districts, the court may then determine whether that plan violates *Miller*.

Second, the Court made clear in *Miller* by its repeated citations to and discussion of *Arlington Heights*, that it was not altering the legal standard by which we assess violations of Section 5. *See, e.g., Miller*, —— U.S. at ——, 115 S.Ct. at 2487 (quoting *Arlington Heights* for proposition that in purpose inquiry, courts must look at impact and "other evidence of race-based decisionmaking"). *See also id.* —— U.S. at ——, 115 S.Ct. at 2483. Plaintiffs must still prove the absence of discriminatory purpose, applying the standards set forth in *Arlington Heights*

and related cases in the voting rights area, such as *Mobile v. Bolden*, 446 U.S. 55, 100 S.Ct. 1490, 64 L.Ed.2d 47 (1980) and *Rogers v. Lodge*, 458 U.S. 613, 102 S.Ct. 3272. As the evidence shows, the School Board has made no such showing. The School Board would, through its reading of *Miller*, essentially undercut the vitality of *Arlington Heights* in a Section 5 case. That was not the intent of the Supreme Court.

Third, assuming *arguendo*, the existence of some hypothetical plan which contains one or more majority-black districts (we do not know which since we do not have a plan before us), the record makes clear that it is possible to draw at least one such district in Bossier Parish, consistent with *Miller* and *Shaw v. Reno*, —— U.S. ——, 113 S.Ct. 2816, 125 L.Ed.2d 511 (1993). By affirming the race-conscious California redistricting plan in *DeWitt v. Wilson*, 856 F.Supp. 1409 (E.D.Cal.1994) (decided the same day as *Miller*), *aff'd* —— U.S. ——, 115 S.Ct. 2637, 132 L.Ed.2d 876 (1995), the Supreme Court made clear that considering race in redistricting, by itself, does not automatically trigger strict scrutiny. In *DeWitt*, the district court found that the California plan "evidences a judicious and proper balancing of the many factors appropriate to redistricting, one of which was the consideration of the application of the Voting Rights Act's objective of assuring that minority voters are not denied the chance to effectively influence the political process." 856 F.Supp. at 1413-14.

As noted earlier, *Miller* recognizes that "traditional race-neutral districting principles [such as] compactness, contiguity, and 'respect for political subdivisions' . . . can defeat a claim that a district has been gerrymandered on racial lines." *Miller*, —— U.S. at ——, 115 S.Ct. at 2488 (citations omitted). As discussed in detail above, *see* Section II(D), *supra*, the alternative plans presented to the School Board and this court do rely upon "traditional districting principles." The districts in the illustrative plans are contiguous, reasonably compact, and respect communities with actual shared interests. *See* Testimony of Price; Testimony of Hawkins; Stip ¶¶ 181-95. Moreover, at least one of the alternative plans would unite a predominantly black residential area, which is split under the Board's plan. "[W]hen members of a racial group live together in one community, a reapportionment plan that concentrates members of the group in one district and excludes them from others may reflect wholly legitimate purposes." *Shaw v. Reno*, —— U.S. at ——, 113 S.Ct. at 2826 (1993). Thus, assuming these districts existed—and they do not—the School Board could not meet its burden under *Miller* to show that race rather than traditional districting principles was the predominant force.

For all of these reasons, the School Board's reliance on *Miller v. Johnson* is unpersuasive.

V.

The evidence in this case demonstrates overwhelmingly that the School Board's decision to adopt the Police Jury redistricting plan was motivated by discriminatory purpose. The adoption of the Police Jury plan bears heavily on the black community because it denies its members a reasonable opportunity to elect a candidate of their choice. The history of discrimination by the Bossier School System and the Parish itself demonstrates the Board's continued refusal to

address the concerns of the black community in Bossier Parish. The sequence of events leading up to the adoption of the plan illustrate the Board's discriminatory purpose. The School Board's substantive departures from traditional districting principles is similarly probative of discriminatory motive. Three School Board members have acknowledged that the Board is hostile to black representation. Moreover, some of the purported rationales for the School Board's decision are flat-out untrue, and others are so glaringly inconsistent with the facts of the case that they are obviously pretexts.

* * * * *

Sometimes we need to step back and look at first principles. Congress passed the Voting Rights Act to combat the "unremitting and ingenious defiance of the Constitution" by several states, *South Carolina v. Katzenbach*, 383 U.S. 301, 309, 86 S.Ct. 803, 808, Louisiana among them. The Bossier School Board continues to resist the Constitution, through its ingenious, if subtle, discrimination against the black citizens of Bossier parish. We are long past the point where discrimination can be easily proven by use of racial epithets, racial categories or openly exclusionary voting requirements. "The Voting Rights Act was aimed at the subtle, as well as the obvious, state regulations which have the effect of denying citizens their right to vote because of their race." *Allen v. State Board of Elections*, 393 U.S. 544, 565, 89 S.Ct. 817, 831, 22 L.Ed.2d 1 (1968). In this case, the School Board's decision to adopt the Police Jury plan was a thinly-veiled effort to deny black voters a meaningful opportunity for representation on the School Board.

The burden is on the School Board to show lack of discriminatory purpose. Because the School Board's proffered reasons are pretextual, it has not met its burden under section 5 of the Voting Rights Act, and its request for pre-clearance must be denied.

Nov. 2, 1995
Date

APPENDIX B

[Filed Apr. 7, 1995]

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

Civil Action No. 94-1495
(LHS (USCA), CRR, GK)

BOSSIER PARISH SCHOOL BOARD, PLAINTIFF

v.

JANET RENO, DEFENDANT

and

GEORGE PRICE, ET AL., DEFENDANTS-INTERVENORS

FINAL STIPULATIONS OF FACT AND LAW

The parties in the above-captioned case respectfully submit the following stipulations of fact and law.

STIPULATIONS OF FACT

Background, Method of Election, and Demographics

1. Bossier Parish is located in northwest Louisiana, bordered at the north by the State of Arkansas. The parish seat is Benton, but the major city is Bossier City. Benton is in the notherern part of the

parish, and Bossier City is in the south-central portion.

2. The Bossier Parish School District, which is coterminous with Bossier Parish, is the only school district in Bossier Parish.

3. Bossier Parish is governed by a police jury, which consists of twelve police jurors elected in nonpartisan elections from single-member districts to four-year, concurrent terms with a majority vote requirement.

4. The Bossier Parish School District is governed by a school board, which consists of twelve members elected in nonpartisan elections from single-member districts to four-year, concurrent terms with a majority vote requirement. No black person ever has been elected to the Bossier Parish School Board.

5. According to the 1990 Census, Bossier Parish had a total population of 86,088 of whom 65,812 (76.45 percent) were non-Hispanic white persons and 17,301 (20.1 percent) were non-Hispanic black persons.

6. According to the 1990 Census, Bossier Parish had a total voting age population of 60,904 of whom 48,130 (79.03 percent) were non-Hispanic white persons and 10,726 (17.61 percent) were non-Hispanic black persons.

7. According to the 1980 Census, Bossier Parish had a total population of 80,721 of whom 63,127 (78.2 percent) were non-Hispanic white persons and 15,024 (18.61 percent) were non-Hispanic black persons.

8. According to the 1980 Census, Bossier Parish had a total voting age population of 54,545 of whom 43,620 (79.97 percent) were non-Hispanic white per-

sons and 9,315 (17.08 percent) were non-Hispanic black.

9. There are four municipalities located in Bossier Parish: Benton (the parish seat), Bossier City, Haughton and Plain Dealing (one very small portion of the City of Shreveport is also located in Bossier Parish).

10. According to the 1990 Census, Bossier City had a total population of 52,721 persons, of whom 9,463 (17.95%) were non-Hispanic black persons. Bossier City had a total voting age population of 37,455, of whom 5,659 (15.11%) were non-Hispanic black persons. Thus, more than 50 percent of the black population of Bossier Parish is concentrated within the City of Bossier. The remainder is concentrated in the areas of Benton (2,047 residents, of whom 41.3 percent are non-Hispanic black persons); Plain Dealing (1,074 residents, of whom 33.0 percent are non-Hispanic black persons); Haughton (1,664 residents, of whom 464, or 27.9 percent are non-Hispanic black persons); and the unincorporated community of Princeton (635 persons, of whom 500, or 78.5% are non-Hispanic black persons).

Section 5 Preclearance Review

11. On May 28, 1991, the Bossier Parish Police Jury submitted its 1991 redistricting plan to the Department of Justice for preclearance under Section 5 of the Voting Rights Act, 42 U.S.C. 1973c. The plan featured twelve single-member districts, all twelve of which had a majority of white persons. During the 1990-1991 Police Jury redistricting process leading up to the preclearance submission, no alternative plan featuring black-majority districts had been presented.

An April 30, 1991 letter detailing complaints regarding the redistricting process from the Concerned Citizens of Bossier Parish, a local black organization, was not included in the preclearance submission. In a letter dated July 29, 1991, the Department of Justice precleared the Police Jury plan.

12. On January 4, 1993, the Bossier Parish School Board submitted its redistricting plan to the Justice Department for preclearance review. The plan submitted was identical to the Police Jury plan precleared in 1991. During the 1991-1992 redistricting process leading up to that submission, an alternative plan was presented which demonstrated that two black-majority districts could in fact be drawn within Bossier Parish. During that same period of time, police jury elections occurred under the new police jury redistricting plan which shed light on voting patterns within Bossier Parish. In a letter dated August 30, 1993, the Justice Department objected to the School Board plan.

Redistricting in Bossier Parish, Louisiana

13. Louisiana state law provides that the parish governing body has the authority to draw, cut, or consolidate election precincts. In Bossier Parish, that body is the Police Jury. State law also provides that precincts must be wholly contained within a police jury or other election district.

14. Pursuant to the relevant state laws in effect at the time, the parish police jury was to draw its redistricting plan (where necessary due to population shifts and the one-person, one-vote requirement) in 1991, making what precinct adjustments were necessary to accomplish that redistricting. Once police jury districts and election precincts were drawn by

the police jury, the parish school board would be able to conduct its own redistricting (if necessary).

15. State law further provided that police juries could not subdivide precincts during 1991, except for subdivisions occasioned by redistricting, which could be adopted during a 45-day "window" between April 1, 1991 and May 15, 1991. Louisiana R.S. 18:532.1 H(1).

16. Louisiana Revised Statutes 18:532.1 H(2) allows a parish to divide a precinct into two or more precincts by visible features which are census tabulation boundaries during April 1, 1991 through May 15, 1991.

17. Louisiana Revised Statutes 18:532.1 H(2)(d) provides that if the Department of Justice should object to a parish reapportionment plan, then that parish may divide a precinct into two or more precincts by visible features which are census tabulation boundaries "in order to satisfy said objections of the Department of Justice."

18. There are no requirements for minimum populations in a precinct, either by total population, voting age population, or registered voters.

19. State law further provided that after redistricting in 1991, parishes could not consolidate precincts until January 1, 1993. Louisiana R.S. 18:532.1 H(2).

20. Pursuant to the same statutory scheme, school boards in Louisiana normally would redistrict after the police jury. Where, as in Bossier Parish, school boards had the same number of seats as the police jury in a particular parish, that school board could not change, split or consolidate the precincts established by the police jury, but instead had to use those precincts as units for redistricting.

21. Louisiana Revised Statutes, Title 17, Section 71.3 E(1) and (2) reads as follows:

> "E. (1) The boundaries of any election district for a new apportionment plan from which members of a school board are elected shall contain whole precincts established by the parish governing authority under R.S. 18:532 or 532.1.
>
> (2)(a) Notwithstanding the provisions of R.S. 17:71(E)(1) or any other law to the contrary, if a school board is unable to meet the federal guideline of plus or minus five percent deviation in the creation of its reapportionment plan through the use of whole precincts, the school board may, in the creation of its reapportionment plan, divide a precinct into portions which are bounded by visible features which are census tabulation boundaries. No such precinct shall be divided into more than two school board districts. No school board district shall contain more than two divided precincts.
>
> (b) The provisions of this Paragraph shall be applicable only in cases in which the number of members of the school board is not equal to the number of members of the parish governing authority of the parish in which the school board is domiciled.
>
> (c) The provisions of this Paragraph shall not be construed as authority for a school board which has adopted or accomplished reapportionment or is able to reapportion itself using whole precincts to divide precincts. Any plan adopted

by a school board in contravention of this Subsection shall be null and void.

(d) The provisions of this Paragraph shall become null and void on December 31, 1992, unless a school board received an objection letter to its reapportionment plan from the Department of Justice. In such event the school board shall use the provisions of this Paragraph to satisfy the objections of the Department of Justice if said objections would require a precinct to be divided and the provisions of this Paragraph shall be null and void after such reapportionment is complete."

22. Nonetheless, it is quite common for parish school boards in Louisiana, even those with the same number of members as their parish police jury, to draw redistricting plans different from the respective police jury redistricting plans. For example, of the nine school board redistricting plans drawn by plaintiff's expert Gary Joiner in which the school board and police jury had the same number of members, five have different plans. Indeed, Bossier Parish had different redistricting plans for its school board and police jury throughout the 1980s.

23. Moreover, school boards redistricting during the early 1990s were always free to request precinct changes from the Police Jury necessary to accomplish their redistricting goals. In fact, the DeSoto Parish and Vernon Parish School Boards employed this method successfully during their recent redistrictings. Joiner testified at deposition that such a practice "is not unheard of, it has been done in other places."

24. School boards and police juries have different needs and different reasons for redistricting, and thus

have legitimate reasons for drawing different redistricting plans. For example, police juries are concerned with road maintenance, drainage, and in some cases garbage collection, and the level of demand for such services in each district is a concern. School board members, by contrast, are typically concerned with having a public school or schools in each district. The current (1991) Bossier Parish Police Jury plan does not have a public school in each district.

25. Louisiana Revised Statutes, Title 17, Section 71.3 E(1) and (2) is racially neutral. Its purpose is solely to promote electoral uniformity and stability.[1]

Bossier Parish Police Jury History and Redistricting Process

26. Incumbency protection considerations come into play in the redistricting of the Bossier Parish Police Jury, and did so in 1982. Incumbency protection has always been a consideration for the Police Jury. Among the primary redistricting criteria employed by the Police Jury during the 1980s redistricting process were one-person, one-vote considerations and respecting each incumbent's wishes regarding the configuration of his own district. According to Police Juror James Elkins and then-Parish Administrator James Ramsey, incumbency protection also was the reason the Parish Police Jury and School Board chose different redistricting plans in the 1980s.

27. Jerome Darby, who is black, was elected to the Police Jury in 1983. He currently is serving his third term as a Police Juror.

---

[1] The defendant and defendant-intervenors do not dispute this assertion, but maintain that it is irrelevant.

28. The Police Jury has a President and Vice President, who are elected from among the Police Jury members to one-year terms. For at least several decades, it has been the custom that the Vice President ascends to the Presidency upon the vote of the full Police Jury. Police Juror Burford testified at deposition that such a succession is "almost automatic." Even when a sitting President took the rare step of running for reelection to the Presidency, the Police Jury followed the tradition of voting the Vice President into the Presidency. In the last 30 years, every white sitting Vice President eligible to serve as a Police Juror the following year has been elevated to the Presidency.

29. Jerome Darby is the only black Police Juror ever to serve as Vice President. In January 1991, the Police Jury voted not to elevate Darby to the Presidency. This occurred just a few months before the adoption of the 1991 Police Jury redistricting plan.

30. Paul Caplis, a sitting Police Juror at that time, has testified at deposition that Darby was passed over for the Presidency "solely because he was black." Bob Burford, also on the Police Jury at that time, describes the Police Jury vote to deny Darby the Presidency as a "miscarriage of justice" which constituted "failing to recognize him as an equal." Asked why he thought the majority of Police Jurors voted against Darby, Burford replied that, although none of Darby's opponents explicitly told Burford so, Burford "thought it was because he was black." Burford, in fact, has served as President though he has served less time on the Police Jury than Darby. Indeed,

every Police Juror elected to office in 1983 or before has become President, except Jerome Darby.

31. There are other indications that the Police Jury operated in an atmosphere of racial prejudice. For example, in response to a deposition question, Police Juror "Pete" Glorioso identified the *Shreveport Times* as the newspaper with the largest circulation in the area; when asked to identify the newspaper read most widely by blacks, he answered, "[A]ny one that they could get free." He further added that "some papers throw away free papers," and that at one time the *Bossier Press* "threw all the free papers to every household."

32. United States Exhibit 1 lists the members of the Bossier Parish Police Jury, and their corresponding districts, at the time of the 1990-1991 redistricting process. James Elkins was President at that time. Except for Jerome Darby, every Police Juror at that time was white.

33. At the November 13, 1990 meeting of the Bossier Parish Police Jury, the Jury authorized a contract with Gary Joiner of Petroleum Graphics to develop a redistricting plan. Mr. Joiner had been interviewed by Parish Administrator James Ramsey, who had arranged for Joiner to make a presentation to the Police Jury. Ramsey told Joiner that Joiner was required to "work with twelve members" of the Police Jury, by which he meant that Joiner had to be responsive to their concerns. To that end, Ramsey suggested that Joiner begin his work by holding one-on-one meetings with individual Police Jurors, at which each Juror could give Joiner input regarding the changes to be made to his own district.

34. Police Jurors were aware of the black population percentages in the districts under the redistricting plan proposed and adopted in 1991. Under the plan finally adopted, one district (District 7) is 43 percent black in total population, and another (District 4) is 45 percent black.

35. No member of the Police Jury ever asked Gary Joiner if it were possible to adjust district lines in either of those districts to raise the black percentage to a level over 50 percent.

36. At the time of the 1990-1991 redistricting process, some Police Jurors were specifically aware that a contiguous black-majority district could be drawn both in northern Bossier Parish and in Bossier City. At the time of the 1990-1991 redistricting process, it was obvious that a reasonably compact black-majority district could be drawn within Bossier City. "Contiguous" here means that all units of geography in the district have some common border with some adjacent unit.

37. During the 1990-1991 redistricting process, Police Jurors had a general understanding that the Voting Rights Act requires jurisdictions to create districting plans which fairly reflect black voting strength.

38. During the 1990-1991 redistricting process, Police Jurors were aware that election precincts could be split by district lines for a number of reasons, including (a) compliance with one person, one vote and (b) compliance with the Voting Rights Act. During the 1990-1991 redistricting process, Police Jurors were told by Joiner at public Police Jury meetings that they could split election precinct lines. They also were aware that the plan they adopted in 1991 split precincts. At the April 30, 1991 public Police

Jury meeting at which the final redistricting plan was adopted, Gary Joiner told the Police Jury members that "approximately 10" precincts were split in the plan. Precinct realignments are a normal practice within Bossier Parish, occurring every three or four years. Bossier Parish has made a number of such precinct realignments within the last ten years.

39. While one of the redistricting criteria set by the Police Jury during the 1990-1991 redistricting process was the inclusion of minority input, the sole black Police Juror, Jerome Darby, initially was excluded from the Reapportionment Committee. At the December 6, 1990 meeting of the Police Jury's Finance Committee, a Technical Advisory Reapportionment Committee was selected to work with Gary Joiner on redistricting. Given Mr. Joiner's previous emphasis on inclusion of minority input as a redistricting criterion, Police Juror Jerome Darby considered it likely that if the redistricting standards were followed, he, as the sole black Police Juror, would be included on the Committee. Indeed, at that time, Darby had recently attended a reapportionment seminar in Monroe, Louisiana. No member of the Committee (other than Joiner) had attended such a seminar.

40. Police Juror Hammack moved that the committee consist of a representative from the District Attorney's office, the Registrar of Voters, the Tax Assessor, Mr. Ramsey (the Parish Administrator), two jurors (Mr. Caplis as the rural representative and Mr. Burford as the city representative) and Mr. Joiner. All of these individuals were white. Upon a vote of ten ayes to one nay, the motion carried. Mr. Darby, the only black member of the Police Jury,

voted against the motion. Darby felt personally insulted by his exclusion from the Committee.

41. At the full Police Jury meeting five days later on December 11, 1990, after black Police Juror Darby protested his exclusion from the Committee as a denial of "equal representation," the Police Jury voted to include Darby plus one other Juror, James Elkins, on the Committee. Elkins testified at deposition that he has "no earthly idea" why the Jury voted to respond to Darby's request by placing Elkins, as well as Darby, on the Committee.

42. The following chart reflects the population characteristics as of the 1990 Census of the Police Jury districting plan adopted in the 1980s:

District	Total Pop.	Deviation	Black Pop.	Black %
1	10,108	40.90%	1,845	18.25
2	10,099	40.77%	1,423	14.09
3	7,906	10.20%	1,889	23.89
4	6,154	−14.22%	2,833	46.03
5	7,569	5.50%	922	12.18
6	10,545	46.98%	954	9.04
7	5,278	−26.43%	2,749	52.04
8	5,776	−19.49%	801	13.86
9	6,835	−4.73%	1,262	18.46
10	5,645	−21.31%	1,801	31.90
11	4,983	−30.54%	539	10.81
12	5,185	−27.73%	363	7.00

None of the Police Jury districts was majority black in voting age population in 1990. Following the instructions of the Police Jury, Gary Joiner used the 1980s as a starting point for drawing a new redistricting plan. The Police Jury's goal was to change that plan as little as possible to adjust for population shifts and keep the mean population deviations of the districts below plus or minus five percent. By changing his own district as little as possible, each Police Juror hoped to retain constituents familiar with him, thus maximizing his chances for reelection.

43. Protection of incumbents played a critical role in the 1990-1991 redistricting of the Police Jury. As a general matter, district lines were changed so that they came between the residences of Police Jurors, and incumbency was always a consideration. Incumbency considerations were behind the Police Jury's rejection of the School Board's suggestion in 1990 that the bodies hold joint redistricting processes. During the 1990-1991 Police Jury redistricting process, the boundary between Districts 11 and 12 was deliberately drawn in such a way as to prevent incumbents Hammack and Elkins from residing within the same district. Hammack also asked Police Juror Caplis to agree to change the lines separating their districts so that a potential candidate, Eddie Shell, would be placed in an open district (caused by the retirement of one of the incumbents) rather than in Hammack's district; Caplis agreed to accommodate Hammack, and the change was made. Police Juror Burford's district boundary was deliberately moved across Old Minden Road in Bossier City to ensure that Burford was not placed in the same district with Brad Cummings, a potential opponent. Several Police Jurors discussed election precinct realignments with Voter Registrar William Johnston, but the Police Jurors were most concerned with the configuration of precincts within their own individual districts. The 1991 Police Jury plan protected all incumbents who intended to run for reelection by keeping their residences in separate districts.

44. At the January 15, 1991 meeting of the Bossier Parish Police Jury, Mr. Joiner presented each

Police Juror with a questionnaire and asked that each of them complete it, making notations of items to be addressed during reapportionment. He also told the members of his plan to interview each member individually and as a group in several open meetings.

45. Between the January 15, 1991 meeting and the final adoption of the Police Jury plan on April 30, 1991, each of the twelve Police Jurors met with Gary Joiner in Joiner's office to view proposed redistricting plans on Joiner's redistricting computer. Present at each meeting were Joiner and from one to three Police Jurors. The intent of the meetings was to find out if any incumbents had concerns with their own districts. To that end, Joiner encouraged groups of incumbents who lived in neighboring districts to come to him so that their concerns as incumbents could be worked out together. At these meetings, each Police Juror focused primarily on the configuration of his own district. These meetings with Joiner were not open to the public.

46. The 1990-1991 redistricting process thus took place in two phases. The first was a closed phase in which individual Police Jurors met with Joiner to discuss the plan, and Joiner devised a proposed plan with which all Police Jurors could agree. This phase took place away from public scrutiny. Once the Jurors agreed on a plan, the plan would be shown to the public. Except for some minor changes discussed at a Police Jury meeting on the day the plan was adopted, the plan agreed upon by the Police Jurors during the closed phase of the process was identical to the plan ultimately adopted.

47. Black Police Juror Jerome Darby met once with Joiner in Joiner's office a few weeks before the plan's final passage. By the time Darby met with

Joiner, Joiner already had met with almost all the other Jurors and had drawn the proposed plan. Joiner told Darby that, under the proposed plan, there was a possibility for three minority individuals to be elected to the Police Jury. Joiner also told him at that time that the proposed plan was the best that could possibly be drawn for blacks in Bossier Parish, and that it was impossible to draw a black-majority district.

48. During this time period, school board member Tom Myrick also met several times with Joiner in Joiner's office, accompanied by one or more police jurors. Myrick lives near Benton, in an area close to a heavy concentration of black population. This area would likely be included in any majority-black district to be drawn in the northern part of Bossier Parish.

49. The result of the private meetings with Joiner were maps of proposed redistricting plans which were presented for public review at public meetings held by the Police Jury. The proposed maps were made available for inspection by the public at the Police Jury office, but not until the day of the public meeting. No extra copies of these maps were available for members of the public to take home with them. Joiner stated that the Police Jury's common procedure was to allow members of the public to make their own copies. The map of the proposed plan on display at the public meetings which was ultimately adopted was too large to be copied.

50. These public meetings were held at 2:00 p.m. on weekdays, when many black residents of the parish were at work. Black citizens previously had asked that these Police Jury meetings take place at night, but those requests were not granted.

51. The public meetings were advertised in one newspaper. The Police Jury instructed its staff to place advertisements in the "minority media." The Police Jury, however, placed advertisements only in the *Bossier Tribune*, its usual legal advertiser. *The Bossier Tribune* is not a widely read newspaper in Bossier Parish, and is not part of "minority media."

52. The first public Police Jury meeting to discuss proposed redistricting plans was held on April 9, 1991. Mr. Joiner presented three plans during this meeting. The data revealed that the ideal population for a Police Jury district is 7,174. None of the plans had a black-majority district. Mr. Joiner represented that the black population was not sufficiently concentrated in the parish to draw even one black-majority district. Mr. Joiner further informed the Police Jury that subdividing precincts would be permissible from April 1, 1991 through May 15, 1991. According to Joiner, the Police Jury likely was previously aware of this fact; the Jury was a member of the statewide Police Jury Association (which lobbied to get this statutory "window" approved) and was thus in "constant communication" with the Baton Rouge election office.

53. At the April 25, 1991 Bossier Parish Police Jury meeting, Gary Joiner presented three plans to the Police Jury. These alternative plans drawn by Joiner were called Plan 5, Plan 8, and Plan 9. A number of members of the black community attended and asked about the creation of a black-majority district. Joiner stated that the wide distribution of blacks in the parish made a black-majority district "statistically impossible." At deposition, Joiner acknowledged that he knew at that time that drawing two black-majority districts within Bossier Parish

was "statistically" possible, in that you could create two majority-black districts at a census block level with the correct population, ignoring precinct considerations.

54. Police Jurors responded to questions regarding a black-majority district at the April 25, 1991 meeting. To repeated questions suggesting the possibility of creating a black-majority district, Police Jurors would impatiently snap, "Don't you understand? We already told you it can't be done!", or words to that effect. Police Juror Glorioso demanded, "Why are you asking for this? You're already being represented adequately!"

55. Black resident Octavia Coleman, on behalf of a number of the black attendees, asked for a copy of the map of Joiner's proposed plan. Joiner said that the display map he had was too large to copy, and that residents would have to come down to the Police Jury office to see it.

56. A number of black attendees asked about the creation of a black-majority district based in the town of Haughton. In response, Joiner pointed out that moving the (heavily black) Princeton area into District 4 (43 percent black under the adopted plan), which includes Plain Dealing, would cause "the problem" that telephone service would be long distance within that district. Under the plan ultimately adopted, however, District 4 includes both Plain Dealing and an area adjacent to the corporate limit of Benton, and telephone service is long distance between these two towns. The Police Jury did not explore the subject of a black-majority district any further at the April 25, 1991 meeting. Upon Police Juror Whittington's motion, the Police Jury decided that Plan 9 would be studied further and pursued

as a final plan for adoption at the April 30, 1991 meeting.

57. In 1991, there was no legal impediment to the drawing of black-majority districts in the Bossier Parish Police Jury redistricting plan.

58. At the April 30, 1991 meeting of the Bossier Parish Police Jury, Mr. Joiner presented "Plan 9" to the members. Mr. Joiner made two changes to Plan 9 after the April 25, 1991 meeting. Neither of the changes were in response to the concerns raised by black residents at prior meetings, nor were they made to increase electoral opportunities for black voters in the parish. The Police Jury minutes reflect that the 1990 Census population statistics for Plan 9 are:

District	Total Pop.	Deviation	Black Pop.	Black %
1	7,372	2%	2,056	27.89
2	7,484	4%	737	9.85
3	6,847	−4%	1,728	25.24
4	6,949	−3%	3,122	44.93
5	7,561	5%	734	9.71
6	7,444	3%	274	3.68
7	6,992	−2%	3,068	43.88
8	6,899	−3%	1,471	21.32
9	7,219	0%	1,000	13.85
10	7,452	3%	2,004	26.89
11	7,019	−2%	504	7.18
12	6,850	−4%	603	8.80

However, Joiner testified at deposition that the actual figures are different, and that the total deviation range of Plan 9 as ultimately adopted by the Police Jury is 11.75 percent.

59. The plan submitted by the Bossier Parish Police Jury to the Justice Department for preclearance was as follows: [2]

District	Total Pop.	Deviation	Black Pop.	Black %
1	7,187	0.18%	2,069	28.8
2	7,429	3.55%	728	9.8
3	6,856	−4.43%	1,737	25.3
4	6,903	−3.78%	3,120	45.2
5	7,607	6.04%	734	9.6
6	7,444	3.76%	274	3.7
7	6,992	−2.54%	3,068	43.9
8	6,899	−3.83%	1,471	21.3
9	7,219	0.63%	1,080	15.0
10	7,452	3.88%	2,004	26.9
11	7,019	−2.16%	504	7.2
12	7,081	−1.30%	592	8.4

60. Precinct lines also were discussed at the April 30, 1991 meeting. Joiner informed the Police Jury that the proposed final plan, through splitting existing precincts, created 13 new voting precincts and thus increased administrative costs for elections. Joiner had discussed the number of precinct cuts occasioned by his proposed plans earlier in the redistricting process.

61. At the April 30 meeting, however, Joiner also informed them that precinct changes could be made after January 1, 1993 so as to consolidate some precincts and thus reduce administrative costs. In fact, according to Joiner, in his private meetings with Police Jurors, and with School Board member Myrick, the redistricting was discussed "in the hopes of con-

[2] The plan submitted by the Police Jury to the Justice Department differed slightly from the plan reflected in the April 30, 1991 Police Jury minutes. The differences are not material to this case.

solidating" precincts, and the Bossier Parish Police Jury is at the present time considering implementing such consolidations. This anticipation of consolidating precincts as soon as practicable existed throughout the Police Jury redistricting process.

62. At this time, it was also Joiner's understanding that even before January 1, 1993, administrative costs could be reduced by placing the machines and poll workers of two precincts at one polling place. This would reduce the number of poll workers which would need to be hired by the parish.

63. After about 30 minutes of discussion before the public, the Police Jury cut off discussion to retire into executive session. After returning from executive session, upon Mr. Caplis' motion, Plan 9 was adopted with one abstention (unrelated to racial concerns), and the Police Jury authorized the preparation of the plan for submission to the Department of Justice for Section 5 review.

64. Mr. Darby explains that he voted for the redistricting plan because he was led to believe by Mr. Joiner and the other Police Jurors that it was impossible to create a black-majority district that would receive Section 5 preclearance from the Department of Justice. That was his understanding at the time of the 1990-1991 redistricting process and the subsequent 1991 Section 5 preclearance review by the Department of Justice. Having since been shown that it was at that time possible to have drawn *two* reasonably compact majority-black districts, Darby has reversed his position and now believes that he was deliberately misled in this regard during the 1990-1991 redistricting process. But for these misrepresentations, he would have voted against the plan finally adopted by the Police Jury.

65. On April 30, 1991, the Police Jury received a letter from the Concerned Citizens of Bossier Parish, a black organization, protesting the lack of openness in the redistricting process. The letter alleged that black citizens were denied information regarding the redistricting which they had requested from the Police Jury. The letter also protested the Police Jury's decision to go into executive session to discuss redistricting at a public Police Jury meeting. Black residents state that at the April 30, 1991 Police Jury meeting, black residents specifically asked that the letter be placed in the Parish's Section 5 submission to the Department of Justice.

66. Police Juror James Elkins, Parish Administrator James Ramsey, and Gary Joiner were among those responsible for making the Section 5 submission to the Justice Department. Though Joiner played a role, the submission was mailed from the courthouse. Police Juror Burford testified at deposition that as a rule, the Police Jury was "very, very careful to keep correspondence" it received. Parish officials involved in the redistricting process, including Police Juror Burford, acknowledged that the April 30, 1991 Concerned Citizens letter normally would have been included with the submission. The April 30, 1991 letter was not included with the submission sent by the Police Jury.

67. At the May 14, 1991 Bossier Parish Police Jury meeting, Mr. Darby referred to the April 30 Concerned Citizens letter regarding reapportionment procedures.

68. The Police Jury sent its Section 5 submission of the 1991 redistricting plan to the Department of Justice on May 22, 1991. The Department of Justice received the Bossier Parish Police Jury redistricting

plan on May 28, 1991. Additional information was received by the Department on July 19, 1991. In a July 29, 1991 letter from John R. Dunne, Assistant Attorney General for Civil Rights, to Mr. James Ramsey, Mr. Dunne informed the Police Jury that the Attorney General did not interpose any objection to the 1991 Police Jury redistricting plan.

69. During the course of the 1990-1991 redistricting process, some Police Jurors rejected the idea of drawing any black-majority districts in the 1991 redistricting plan. The reasons given by Police Jurors for this rejection vary. Police Juror Burford testified at deposition that among other things, he felt it would be desirable to have Jerome Darby continue on the Jury as a black member elected from a white-majority district, and to maintain a number of other white-majority districts with sizeable black populations, but to avoid the creation of a district with a black-majority. Police Juror Glorioso testified that the Police Jury never seriously considered the idea of creating a black-majority district because there was already one black person sitting on the Jury.

70. While some Police Jurors testified at deposition that a plan containing a black-majority district would have crossed too many precinct lines, thereby creating new precincts and raising election costs, the Police Jurors had been told by Joiner at the April 30, 1991 meeting that the plan they were adopting in 1991 created at least ten new precincts, and thus raised election costs. Actually, 20 new precincts were created when the 1991 Police Jury plan was drawn. Moreover, at the time of the adoption of the 1991 plan, Police Jurors did not know and did not seek to learn the number of precincts that would have to

be split to create a black-majority district. Joiner never informed the Police Jury of an exact number of additional split precincts that would be caused by drawing a black-majority district, and no Police Juror ever asked for this information. To Joiner's knowledge, the Police Jury never gave him a maximum number of precinct splits they deemed acceptable. The plan ultimately adopted by the Police Jury was not the redistricting alternative with the lowest number of splits.

71. Joiner testified at deposition that any factors arguing against the creation of a majority-black district "would be lumped under" the general category of concerns regarding the splitting of precincts.

72. Several Police Jurors testified at deposition that a black-majority district would contain unacceptably narrow or otherwise oddly-shaped lines. They claimed to base this conclusion on their examination of black population concentrations within the parish on Gary Joiner's computer, or on their own personal knowledge of black concentrations within the parish. Police Juror Burford testified that Joiner did not show him anything to support this conclusion. According to the deposition testimony of Police Jurors involved in the process, at no time during the 1990-1991 redistricting process did any Police Juror see a map of a black-majority district showing the actual boundary lines of such a district. No parish official who testified has any knowledge that Mr. Joiner ever drew such a district, nor that any Police Juror ever asked him to attempt to do so. Further, at least some Police Jurors acknowledged that any such concerns relating to shape would not apply to a black-majority district contained within Bossier City.

73. Several Police Jurors admit that it was not their understanding at the time of the 1990-1991 redistricting that there was anything potentially illegal about drawing oddly-shaped black-majority districts.

74. Police Juror Burford admitted that if a district in the Police Jury plan ultimately adopted was in his view oddly-shaped, that he would "have a problem" with it only if it were drawn specifically to achieve a particular racial proportion.

75. Former Parish Administrator Ramsey testified at deposition that a black-majority district in the northern part of the parish would have to include Benton and Plain Dealing, which are too different to be joined, and whose black communities would oppose being combined into a district. Ramsey testified that neither he nor any of the Police Jurors ever asked the black communities of either of those two towns whether they would oppose being combined into a single district; that black citizens inquiring at Police Jury meetings about black-majority districts were not asked about this point; and that he really did not know if black persons in either of those two towns would prefer a plan with all white-majority districts over being combined into a single district. Even if this truly had been a concern, it would of course be inapplicable to a black-majority district within Bossier City.

76. The plan ultimately adopted contains a (white-majority) northern parish district which includes Benton and Plain Dealing. Former Parish Administrator James Ramsey testified that this created a "bad situation" for the Juror representing the district.

77. One Police Juror testified at deposition that a black-majority district in Bossier Parish would

have had to be 30 miles in length, which would be unacceptably long. The Police Jurors were aware at the time of redistricting that the current (1991) Police Jury plan contained a white-majority district which was approximately 30 miles long. The district in question was further elongated as a result of negotiations among several of the Police Jury incumbents. The elongation was designed to ensure an incumbent's reelection. Police Jurors were aware that a black-majority district contained within Bossier City would be considerably shorter than 30 miles long.

78. The plaintiff's expert felt that it was unlikely that the Police Jury could have drawn two black-majority districts in Bossier Parish while still protecting all incumbents who were running for reelection.

79. At the November 9, 1993 public Police Jury meeting, George Price, representing the local NAACP chapter, called for the Bossier Parish Police Jury and School Board "to publicly meet and develop a redistricting plan that will increase the number of minorities on these boards and that more accurately reflect the make-up of this parish." Price also called upon the police jury to "seize" the opportunity to "assign and employ more blacks throughout the parish." Price had previously sent a letter to the Police Jury on October 7, 1993 which included the concern that the 1991 Police Jury redistricting plan did not reflect "the make-up of our parish." Once the idea of redrawing the police jury districts was presented, the Police Jury dismissed it real quickly. On January 11, 1994, the Police Jury passed unanimously a motion to make public the Police Jury's intention

to maintain its current district lines. This was the only Police Jury meeting at which the Police Jury passed such a resolution.

Bossier Parish School Board Redistricting Process

80. In 1992 the Bossier Parish School Board undertook its obligation to present a redistricting plan for preclearance. It hired Mr. Gary Joiner to assist in the effort. Mr. Joiner met with the Board and explained what he perceived to be the requirements of the Voting Rights Act of 1965. In the course of his explanation, he told the board about the Police Jury plan and told the Board that because the Police Jury and the School Board were the same size and because both used twelve single-member districts the adoption of the Police Jury plan was a viable option. He also told the Board that the Police Jury plan had been precleared and that the same plan from the School Board would unquestionably get preclearance as well. Mr. James Bullers, Bossier Parish District Attorney and legal counsel for the Board, concurred in that opinion.

81. The Bossier Parish School Board adopted a different plan from the Police Jury for the 1980s due to incumbency protection considerations.

82. The Bossier Parish School Board districts in effect during the 1980s were malapportioned after the 1990 Census. The district population figures after the 1990 Census were:

District	Total Pop.	Deviation	Black Pop.	Black %
1	9,233	28.71%	1,230	13.32
2	7,889	9.97%	1,291	16.36
3	13,598	89.56%	1,501	11.04
4	6,552	−8.66%	3,055	46.63
5	6,498	−9.42%	962	14.80
6	7,963	11.00%	1,579	19.83
7	5,867	−18.21%	2,569	43.79
8	6,516	−9.17%	1,149	17.63
9	6,229	−13.17%	1,374	22.06
10	6,054	−15.61%	1,824	30.13
11	4,085	−43.05%	460	11.26
12	5,604	−21.88%	387	6.91

83. The School Board was not under the same time constraints to redistrict as the police jury following the availability of the 1990 Census. The next scheduled School Board elections were not until October 1994. At the October 18, 1990 meeting of the Bossier Parish School Board, the School Board unanimously voted to authorize Dr. Peterson to "convey to the police jury that the School Board would agree to work with a professional demographer to hopefully end with the same geographical boundary lines."

84. The Police Jury was not interested in pursuing the redistricting process jointly with the School Board because of incumbency protection considerations.

85. One School Board member, Tom Myrick, did participate in the Police Jury redistricting process. Myrick met with Joiner, who drew the Police Jury plan, some five times during the Police Jury process. On these occasions, Myrick was accompanied by at least two of the Police Jury members, Rick Avery and Tommy Scarborough, all of whom represent districts, portions of which could be used to create a

black-majority district north of Bossier City. Myrick was only concerned with the configuration of his own district. Joiner gave Myrick a map of the Police Jury plan at that time.

86. The School Board took up the subject of redistricting again at its May 2, 1991 meeting. The policy jury had just adopted its plan on April 30, 1991, and Joiner attended the meeting at the invitation of the Superintendent of Schools, W.T. Lewis. Joiner discussed the demographic changes in the parish since the 1980s redistricting. Joiner also discussed the concentrations of black population in the parish. Joiner stated that while in the future some majority-black School Board districts could be created, at that time there were no concentrations of black population heavy enough to create a majority-black district. Joiner further explained that, unlike the Police Jury, the School Board had more than adequate time to draw its districts since members would not run in the new districts until 1994. By unanimous vote, the Board engaged Mr. Joiner for the redistricting project, which Joiner estimated would take 200 to 250 hours.

87. Joiner's estimate of his time included developing alternative plans, and School Board members considered drawing a plan different from the Police Jury at the start of the process. No member of the all white School Board expressed interest in drawing black-majority districts. The discussions about drawing a plan different from the Police Jury plan focused on concerns about equalizing population among the districts and not on achieving a racial balance.

88. The Board did not give any specific redistricting criteria to Joiner other than to draw a plan that

meets all the legal requirements. Joiner never used school attendance zones for the purpose of drawing a map. The idea of keeping "communities" together was not specifically stated to Joiner as a criterion for redistricting.

89. At the September 5, 1991 Bossier Parish School Board meeting, Joiner distributed configuration maps of the new precincts for the Bossier Parish Police Jury, which had been precleared by the Justice Department on July 29, 1991, along with the police jury redistricting plan. Joiner told the School Board members that he provided the precinct maps because they would have to work with the Police Jury to alter the precinct lines. The School Board could not itself alter these precinct lines and that would limit its redistricting options. Joiner also said he planned on meeting with School Board members in small groups to develop a plan that would meet Department of Justice approval.

90. At this point, Board member Tom Myrick suggested adopting the police jury plan.

91. The Police Jury plan did not pair Myrick with another School Board incumbent or announced School Board candidate, and placed Myrick in a white-majority district. Myrick lives in the area which would be included in the northern parish black-majority district under the various alternative plans.

92. Following the October 17, 1991 School Board meeting, Joiner distributed maps to the Board illustrating the relationship of the present Bossier Parish School Board districts to the districts approved by the Bossier Parish Police Jury, so that School Board members could see how their present districts would be affected if they adopted the police jury plan. No

other alternative plans were discussed at this time. The School Board members gave no consideration at this time to the creation of a minority voting district.

93. By the spring of 1992, it had come to the attention of the local chapter of the NAACP that the School Board was in the planning stages of the reapportionment of School Board districts. On March 25, 1992, George Price, as President of the local chapter of the NAACP, wrote to Superintendent Lewis requesting that, in light of the fact that there were no minorities on the Board, the NAACP wished to be included in all phases of the redistricting process. Price's letter was distributed to the members of the Board. The Board did not respond to Price's letter and took no action to include the NAACP in the redistricting process.

94. After hearing no response from the School Board, Price wrote again to Superintendent Lewis on August 17, 1992, to request that the Bossier Parish Branch of the NAACP be allowed to come before the Bossier Parish School Board and present their views on the redistricting. Price also stated that the NAACP would oppose any plan that, like the police jury plan, diluted minority voting strength.

95. At the August 20, 1992 meeting of the Bossier Parish School Board, Price, representing the NAACP, addressed the Board regarding immediate concerns that affect blacks in the Bossier Parish School System. At this meeting, Price presented the Board with nine proposals: 1) the appointment of a black to fill the current vacancy on the Board; 2) development of an early recruitment program for black teachers; 3) diligence in recruiting, hiring, retaining, and promoting blacks; 4) offering alternative certification to liberal

arts majors; 5) development of a reassignment and transfer program to insure parity or equalization of minorities at all schools; 6) organizing a recruitment program with predominately black colleges; 7) encouraging Parish graduates to pursue education as a major and return to Bossier to work and live; 8) encouraging the Superintendent and Board to be actively involved in all communities; and 9) guaranteeing participation of every Parish citizen in reapportionment of School Board districts. No specific action was taken by the School Board in response to Price's presentation.

96. At some point during the School Board redistricting process, Joiner met with the School Board members with his computer at a time other than a regularly scheduled Board meeting. While all of the School Board members remember the meeting, no one remembers the date. Board member Barry Musgrove believes the meeting occurred in August of 1992. No School Board meeting minutes reflect such a meeting, and there was no notice to the public of the meeting. At this meeting, Joiner had his computer set up and individual members or groups of members gathered around him as he demonstrated alternative redistricting plans or "scenarios" for creating districts. This is the only time that the Board was shown alternative "scenarios."

97. Despite the NAACP's repeated requests to participate in the redistricting process, it was not given notice of such a meeting and thus did not attend. In considering the adoption of a redistricting plan and after listening to the comments of concerned citizens, the school board consulted only with its attorney and cartographer and did not consult with any special

interest group or racial organization, either white or black.

98. Frustrated by the School Board's lack of responsiveness to his request to become part of the redistricting process, Price contacted the NAACP Redistricting Project in Baltimore in the summer of 1992. The Project developed a partial plan for Price to present to the School Board that consisted of two districts which reflected the black voting strength in Bossier Parish. The NAACP alternative plan distributed the population in those two district as follows:

District	Total Pop.	Deviation	Black Pop.	Black VAP
1	6,913	−3.6%	56.8%	50.6%
2	6,854	−4.5%	62.6%	58.9%

99. The NAACP did not draw a complete plan because they were most interested in demonstrating ways to more fairly reflect black voting strength and did not want to raise issues as to the other districts: the School Board was free to draw them in any way they chose. When Price showed this plan to a school district official, he was told that the plan was unacceptable and that he would need to come up with a plan that contained all twelve districts. Price relayed this information back to the NAACP Redistricting Project, which then drew a plan for all twelve districts.

100. At the September 3, 1992 meeting of the Bossier Parish School Board, Mr. Price, speaking for the NAACP, Men's Club of Bossier, Voter's League, Concerned Citizens, Bossier Housing Tenant Coalition and the Concerned Parents of Plain Dealing, presented a map of all twelve districts and made a

statement on behalf of the NAACP. Price stated that black-majority districts could be created for the Bossier Parish School Board. The School Board members stated that they would need to see a bigger map before they would analyze it. The NAACP alternative plan distributed the population as follows:

District	Total Pop.	Deviation	Black Pop.	Black %
1	6,874	−4.18%	3,908	56.85
2	6,875	−4.17%	4,311	62.71
3	6,886	−4.01%	2,595	37.69
4	7,289	1.60%	645	8.85
5	7,002	−2.40%	522	7.46
6	7,188	0.20%	1,000	13.91
7	6,823	−4.89%	555	8.13
8	7,457	3.94%	950	12.74
9	7,427	3.53%	584	7.86
10	7,414	3.35%	1,116	15.05
11	7,395	3.08%	514	6.95
12	7,458	3.96%	601	8.06

101. District 3 contained Barksdale Air Force Base. One census block constituting most or all of the base contains 3,327 people. Most of these people are not registered to vote in Bossier Parish. The distribution of the population in District 3 without the census block which includes the military base is:

District	Total Pop.	Black Pop.	Black VAP
3	3,559	53.5%	51.0%

102. Both Gary Joiner and Parish District Attorney James Bullers were present at the meeting. Both summarily dismissed the NAACP plan. The stated reason for their dismissal was that the plan's district lines crossed existing precinct lines, and therefore violated state law. Joiner and Bullers were aware of

the option of obtaining precinct line changes from the police jury.

103. At the September 17, 1992 School Board meeting, Jerome Blunt was sworn in as the first black person to serve on the School Board. Blunt was appointed by a vote of 6-5 by the School Board following a resignation. The NAACP had lobbied the School Board for the appointment of a black person.

104. The narrow vote in favor of Blunt's appointment was contemporaneous with the 1992 School Board redistricting process. Board member Michelle Rodgers testified at deposition that three white constituents called her to express bitter opposition to Blunt's appointment. These constituents charged that Rodgers supported him only because he was black, and that she had "bowed down" to the NAACP.

105. Blunt served in the office only six months. Blunt was defeated in a special election by a white candidate, Juanita Jackson. The district in which he ran was 11 percent black in population, according to the 1990 Census.

106. At the September 17, 1992 Bossier Parish School Board meeting, Price, speaking for the NAACP, Men's Club of Bossier, Voter's League, Concerned Citizens, Bossier Housing Tenant Coalition and the Concerned Parents of Plain Dealing, again presented for consideration the redistricting plan developed by the NAACP. Also at the September 17, 1992 Bossier Parish School Board meeting, the School Board unanimously passed a motion of intent to adopt the Police Jury plan. It was announced that the plan would be on display, a public meeting would be held on September 24, 1992 and final action would be taken at the October 1, 1992 School Board meeting.

The Board did not direct Joiner to conduct any further study of the NAACP plan. The Board did not delay any further action on the adoption of the police jury plan until Joiner had more time to study the NAACP plan, despite the fact that Joiner had previously told the School Board that there was no reason for haste, because the next School Board election was in October 1994.

107. Blunt did not participate in any discussion about the redistricting process. In his opinion, the Board had already made up its mind to adopt the Police Jury plan by the time he took office.

108. A public hearing was held on September 24, 1992. All of the members of the Board were present except Susan Barrera and Boyce Hensley. District Attorney Bullers was also present. Forty people registered their attendance, although the room, which has a capacity of 75 persons, was overflowing. Fifteen people, the majority of whom were black, addressed the Board. All black residents voiced their opposition to the School Board's adoption of the police jury plan because, they alleged, it diluted black minority voting strength. Price, as the President of the NAACP, presented a petition which contained over five hundred signatures, constituting the largest petition received by the School Board since at least 1990. Price requested that the School Board give the plan developed by the NAACP its utmost consideration and that it be used as a foundation for the creation of three districts that increase the possibility of blacks to be elected to the School Board. Price also admonished the School Board to be cautious about abdicating its responsibility to Gary Joiner, who is not a lawyer. Price advised the Board of the supremacy clause of the United

States Constitution and that the state law governing precinct alterations could not supersede compliance with the Voting Rights Act. He also stated that the Justice Department's preclearance of the Police Jury plan in 1991 did not preclude an objection to the School Board's adoption of the plan in light of the submission of the NAACP plan to the Board which demonstrated that it was possible to draw a plan that did not dilute minority voting strength. He also told the Board that the fact that the police jury plan was precleared did not immunize the Police Jury or the School Board if they adopted the plan from litigation under Section 2 of the Voting Rights Act.

109. At the October 1, 1992 School Board meeting, the Bossier Parish School Board passed a resolution adopting the Police Jury plan. The vote was 10 ayes, 1 abstention and 1 absent. Jerome Blunt, the School Board's only black member, abstained. Blunt abstained because he felt that by abstaining, he would draw more attention to the fact that the plan diluted black voing strength. Barbara W. Gray was absent. The plan adopted has two districts in which incumbents are pitted against each other and two districts in which no incumbents reside. The population figures for the adopted plan are:

District	Total Pop.	Deviation	Black Pop.	Black %
1	7,187	0.18%	2,069	28.79
2	7,429	3.55%	728	9.80
3	6,856	−4.43%	1,737	25.34
4	6,903	−3.78%	3,120	45.20
5	7,607	6.04%	734	9.65
6	7,444	3.76%	274	3.68
7	6,992	−2.54%	3,068	43.88
8	6,899	−3.83%	1,471	21.32
9	7,219	0.63%	1,080	14.96
10	7,452	3.88%	2,004	26.89
11	7,019	−2.16%	504	7.18
12	7,081	−1.30%	592	8.36

110. The School Board proceeded to adopt its final plan on October 1, 1992. The plan was not submitted to the Justice Department for preclearance until January 4, 1993.

111. In its order of October 1, 1970, modifying the April 29, 1970 decree, the court in *Lemon* v. *Bossier Parish School Board*, C.A. No. 10,687 (W.D. La.), a school desegregation case, mandated the establishment of a Bi-Racial Advisory Review Committee. The committee was to be comprised of an equal number of black and white members. The purpose of the committee was to "recommend to the School Board ways to attain and maintain a unitary system and to improve education in the parish." The court directed the school board to supply the committee with information requested by the committee.

112. The establishment of a Bi-Racial Committee to "analyze and make recommendations as to whether or not the present desegregation plan is to be reviewed, and if so, how," was also incorporated into the consent decree on April 12, 1976, in the *Lemon* case. The Committee, however, met only two or three times, and

only the black members of the Committee attended. The Committee never met again after the first scheduled meetings in 1976.

113. Shortly after the School Board's redistricting plan was submitted to the Justice Department for Section 5 review, another committee, this time called the "Community Affairs Committee," was formed at the request of the black community. The committee held its first meeting on January 26, 1993.

114. It was originally the Board's intent to use the Community Affairs Committee to satisfy its requirement under the 1976 consent decree in the *Lemon* school desegregation case, to have a "Bi-Racial Committee." Pursuant to the Consent Decree, the Bi-Racial Committee was "charged with the responsibility of investigating, consulting and advising the court and school board periodically with respect to all matters pertinent to the retention of a unitary school system."

115. One of the purposes of the committee was to address the concerns of the black community. The concerns involved the following goals: 1) develop and maintain an early recruiting program, starting at least at the sophomore level of college, and include lay persons from the community in this process; 2) demonstrate diligence in recruiting, hiring, retaining, and promoting African Americans in the Bossier Parish School System; 3) develop a reassignment and transfer program designed to insure parity or equalization of minorities at all schools; (Elementary, Middle, and High) so that black children can see people from their ethnic background working as professionals; 4) organize and maintain a recruitment program with Grambling State, Southern University, Xavier University, and Dillard University to increase numerically the number of black teachers in the Bossier Parish School System; 5) establish and maintain a tracking system of Bossier Parish graduates so as to counsel and encourage as many as possible to pursue education as a major, and to return to Bossier Parish to work and live; and 6) encourage the Superintendent and each School Board member to become actively involved in all communities, and to bring and receive information calculated to improve the Bossier Parish School System on behalf of all citizens.

116. The School Board disbanded the Committee after three months. Board member Musgrove stated that the reason the committee was disbanded was because, "the tone of the committee made up of the minority members of the committee quickly turned toward becoming involved in policy."

117. This action created strong resentment on the part of the black community. On July 14, 1993, a coalition of black groups, including the NAACP, Concerned Citizens of Bossier Parish, the Men's Club of Bossier, and the Voting League of Bossier Parish, sent a letter to the Board requesting a response as to the steps the Board planned to take regarding the following concerns: 1) the establishment of a community advisory group which would supply input to the School Board concerning educational matters; 2) recruitment and placement of black teachers and administrators in the Bossier Parish School System; 3) plans to address the low math/science scores of black children and to provide scores of Bossier Parish students, along racial lines; 4) the updated status of the Bossier Parish School Board Redistricting Plan; 5) the need to establish a committee to study the possibility of including a black history year round program in the Bossier Parish School System; 6) the

need to provide the policy and procedure for bidding on contractual services provided to the School system; and 7) the need to provide a list of recent contractors that have completed work for the Bossier Parish School System.

118. On March 5, 1993, the Justice Department acting pursuant to its responsibilities under Section 5 of the Voting Rights Act, issued a timely request for additional information concerning the Bossier Parish School Board's redistricting plan. The school board provided additional information.

119. On August 30, 1993, the Attorney General interposed a timely objection to the 1992 redistricting plan for the election of Bossier Parish School Board members. The letter informed the School Board that while the Justice Department was aware that it precleared the identical redistricting plan for the Bossier Parish Police Jury districts in 1991, it had taken into account "new information," particularly the 1991 Police Jury elections held under the 1991 redistricting plan and the 1992 redistricting process for the School Board. An alternative plan which demonstrated "that black residents are sufficiently numerous and geographically compact so as to constitute a majority in two single-member districts" and which was preferred by members of the black community was rejected by the School Board and the Board "engaged in no efforts to accommodate the requests of the black community." The letter further acknowledged that while "the School Board is not required by Section 5 to adopt any particular plan, it is not free to adopt a plan that unnecessarily limits the opportunity for minority voters to elect their candidates of choice." The Attorney General also rejected the School Board's argument that state law preventing splitting of precincts precludes adoption of a redistricting plan with majority-black districts, noting that state law allows Police Juries to realign precincts.

120. At the September 3, 1993 School Board meeting, in executive session, the Board discussed its options in light of the Attorney General's objection. All of the School Board members had been given copies of the objection letter. The Attorney General's letter articulated the reasons for the objection and specifically pointed out the Board's option of consulting with the Police Jury in an attempt to change precinct lines to allow the drawing of a plan which fairly reflects minority voting strength.

121. There was no discussion of precinct realignment or conducting a further study of the potential to draw black-majority districts. The Board voted unanimously at that meeting to ask the Justice Department to reconsider the objection.

122. In a letter dated September 3, 1993, District Attorney Bullers requested reconsideration of the objection.

123. At the September 16, 1993 School Board meeting, NAACP President Price again addressed the Board representing a coalition of black organizations, and requested that the School Board reconsider its decision to ask the Justice Department to withdraw the objection, because the Police Jury plan adopted by the Board diluted black voting strength. The Board never responded to Price's suggestion.

124. Price again appeared before the School Board on November 18, 1993 to discuss the concerns that had been raised by the black community in its letter of July 14, 1993 and to which the School Board had failed to respond. School Board member Musgrove

admitted that there is a need for a better relationship between the Board and the minority community.

125. In a letter dated December 20, 1993, the Attorney General denied the Bossier Parish School Board's request for reconsideration of the objection. The letter concluded that "given the apparent pattern of racially polarized voting in parish elections, black voters will be unable to elect a candidate of their choice to the school board under the objected-to redistricting plan." The letter also referenced the failure of the School Board "to accommodate the request of the black community that the board develop a plan with two black-majority districts." The letter also noted that, despite the fact the original August 30, 1993 objection letter noted that "the school board could have, but did not, seek a realignment of voting precincts by the Bossier Parish Police Jury that would have facilitated the development of a plan that fairly reflects black voting strength," the School Board made no attempt at this potential solution to its state law concerns. The letter noted the School Board's argument, made for the first time in its request for reconsideration, that under *Shaw* v. *Reno*, 113 S. Ct. 2816 (1993), the NAACP plan "is 'so irrational on its face that the plan could be understood only as an effort to segregate voters into separate voting districts because of their race.'" The letter stated, however, that the Board provided no explanation or basis for this conclusion. "Moreover, the Board does not appear to dispute the fact that black residents are sufficiently numerous and geographically compact in the parish so that two black-majority districts could be created. You contend only that it is not possible to do so given current pre-

cinct configurations." Accordingly, the School Board's reliance on *Shaw* v. *Reno*, was deemed "pretextual."

126. Following the January 20, 1994, School Board meeting, at the request of Board member Barry Musgrove, the School Board requested that Gary Joiner review the redistricting plan to see if there was any possibility that he may have missed any alternative configurations.

127. At the March 17, 1994, School Board meeting, Price inquired into the status of Joiner's progress at developing alternative proposals. In a letter dated March 18, 1994, District Attorney Bullers requested from Joiner a report regarding the status of his attempts to develop alternative redistricting proposals. No School Board member has ever requested that Joiner produce maps or otherwise demonstrate any of his attempts to draw black-majority districts for the Bossier Parish School Board.

128. At no time during the redistricting process, including up to the present time, did the Bossier Parish School Board or any other representative of the School Board ever direct Gary Joiner to approach the Police Jury to request that the precinct lines be redrawn to enable the creation of majority-black School Board districts.

Geographic Compactness and Analysis of Alternative Plans

129. Dr. George Castille is qualified as an expert in Louisiana geography. He is competent to analyze maps and accompanying statistics and to testify to that analysis.

130. William S. Cooper is qualified as an expert in redistricting and geographic information system software as it relates to redistricting. He is competent

to draw and analyze maps, to analyze accompanying statistics, and to testify to that analysis.

131. The boundary markers used in the 1992 Bossier Parish School Board redistricting plan are roads, streams, railroads, and corporate limit lines. Within Bossier City, the School Board's plan also uses the limits of Barksdale Air Force Base.

132. The use of corporate limit lines as election district boundaries is problematic, in that corporate limits are usually arbitrary, and often divide racial concentrations or other communities of interest. This division can occur when corporate lines are not revised frequently enough to accommodate urban growth. It can also occur as a result of selective, discriminatory policies regarding annexation and de-annexation. People can have common interests for redistricting purposes even though they are split by corporate boundaries.

133. One factor to be avoided in redistricting is "fracturing," defined by plaintiff's expert Gary Joiner as drawing boundary lines to divide a "population that has a traditional cohesiveness, lives in the same general area, [and] has a lot of commonalities," where this division is effected with "a purposeful intent to splinter . . . to fracture that population into adjoining white districts."

134. Among the considerations in determining "commonalities" within a district (or between two areas) are socioeconomic commonalities among the residents thereof.

135. Black persons in Benton and in Plain Dealing have some commonalities of interest.

136. The community of Benton has expanded outside the corporate limits in several areas, and the corporate limits fragment those black neighborhoods

that straddle the corporate line. By following the corporate limits, the proposed plan's district boundary lines fragment black neighborhoods, splitting them between Districts 3 and 4. One cluster of black families lives along Shaffers Road on the east side of Benton, and a large black subdivision has developed along Highway 162 just north of the Benton Community Club Cemetery. Another group of black residents is located immediately north of the Benton corporate limits at the end of Second Street.

137. In the school board's proposed plan, the area within Bossier City bounded by Shaver, Beckett, Fuller and McArthur Streets is included within District 8 rather than District 7 located immediately to the west. The boundary used, a railroad track, separates this neighborhood from a larger black residential area on the District 7 side of the line. A nearby road could have been used as the boundary marker, keeping the two adjacent communities together.

138. Plaintiff's expert Gary Joiner testified at deposition that though he could not be certain without further inquiry, this boundary line "appears to be an example of fracturing." Joiner also testified that it is likely that there are "numerous options" available to avoid this instance of fracturing short of causing another precinct split.

139. Plaintiff's expert Gary Joiner employs, as a standard part of his redistricting mapping work, one test for compactness: the "Swartzburg major-minor axis test." This test is run on Joiner's computer. Joiner ran this test on the former and current Police Jury plans. At least four of the twelve Police Jury districts drawn in the 1991 Police Jury plan failed this compactness test. Joiner suggested at deposition that at least two of the twelve districts (Districts

10 and 12) would fail this compactness test because they were "elongated." Joiner also stated that Districts 1 and 4 of the plan were not compact either.

140. Former Parish Administrator Ramsey, who was involved in the redistricting process, noted that the northern parish district (District 4) in the 1991 Police Jury plan takes up almost half of the geographic area of the parish. According to Ramsey, this district contains an inordinate number of roads and drainage areas to be maintained, and is "impossible to represent."

141. The plan adopted by the school board in 1992 does not have a public school in each district. The district lines do not correspond with school attendance zones within Bossier Parish.

142. Black students comprise approximately 29 percent of the student enrollment in the Bossier Parish school system. As of March 24, 1994, there are five schools in the Bossier Parish School District in which the majority of the students are black: Bossier Elementary (77.1% black), Butler Elementary (74.2% black), Plain Dealing Elementary (77.7% black), Plain Dealing Middle/Senior High School (76.9% black), and Plantation Park Elementary School (51.9% black). Bossier and Butler Elementary Schools are the only two schools within the proposed Bossier City black-majority district in the NAACP School Board redistricting plan (or within similar alternative districts drawn by William Cooper). Plain Dealing Elementary and Plain Dealing High School are the only schools within the proposed black-majority district in the northern portion of the parish under the NAACP Plan (or similar alternative districts drawn by Cooper). Indeed, the

two Plain Dealing schools are the only two schools north of Benton in the Bossier Parish school system.

143. During the 1992 redistricting process for the Bossier Parish School Board, black citizens offered an alternative redistricting plan which created two black-majority districts, one in the northern part of the parish, and one within Bossier City. This plan, the "NAACP Plan," demonstrates that, using Census blocks, two contiguous districts with a black voting age population majority can be drawn within Bossier Parish for the Bossier Parish School Board.

144. The NAACP Plan employs the same types of physical and artificial features as in the School Board's plan: roads, streams, railroads, corporate limits, and, within Bossier City, the limits of Barksdale Air Force Base. The NAACP Plan uses streams to a greater extent than the School Board Plan; the district boundaries correlate with streams in at least 14 locations, as opposed to only 6 in the School Board Plan. Overall, in the use of logical, traditional features such as roads, streams, etc., as boundary markers, the NAACP Plan is not significantly different from the School Board plan.

145. Census blocks are certainly irregular and varied in shape within Bossier Parish.

146. Curves in the NAACP Plan District 2 lines occur immediately north of Plain Dealing, within the Bodcau Wildlife Management Area in the east central part of the parish, and in the areas immediately north and east of the Black Bayou Reservoir. All of these district curves represent boundaries which follow local stream patterns and rural roads. Irregularly shaped Census blocks (and therefore irregularly shaped district boundaries) are more likely to occur in rural parishes within hilly terrain, such as Bossier

Parish, than in relatively flat areas such as in the southwestern part of Louisiana.

147. After the School Board adopted its proposed plan, defendant-intervenors' expert, William Cooper, drew other plans containing two black-majority districts, one in the northern part of the parish and one within Bossier City. Maps and descriptions of these plans are included as exhibits to the direct testimony of William Cooper. These plans include one drawn for the recent *Knight* v. *McKeithen* litigation (Cooper, Exh. 1); and one drawn with a view toward maximizing compactness (Cooper, Exh. 3). Both these plans, particularly the latter, also demonstrate that, using Census blocks, two contiguous black-majority districts can be drawn within Bossier Parish for the Bossier Parish School Board. Both plans comply with the principles of one person, one vote, fairly reflecting minority voting strength, and contiguity.

148. The northern parish minority district in the Cooper Plan, District 8, is similar in shape and location to District 2 of the NAACP Plan, but is less elongated and more compact. The two are sufficiently similar so that the possibility of creating a district like the Cooper District 8 was readily discernible. However, Cooper District 8 is shorter and more compact.

149. District 4 in the 1991 Police Jury Plan (the Proposed School Board Plan) is similar to District 8 shown in Exhibits 1 and 3 to the direct testimony of William Cooper, to the extent that both are large districts centered in the north-central portion of the parish. District 4 in the Proposed School Board Plan has a land area of 424 square miles, 49.6 percent of the entire Bossier Parish area. District 8C in Exhibit 3 has a land area of 252 square miles, 29.5 percent

of the entire parish area. District 4 in the Proposed School Board Plan is 33.5 miles long from the extreme northwest to the extreme southeast. District 8C from Exhibit 3 is 34.5 miles long from the extreme northwest to the extreme southeast. Thus, each alternative minority district for northern Bossier Parish shown in Exhibits 1 and 3 is virtually identical in length to the School Board's proposed district configuration and covers 40 percent less land area.

150. The minority district configuration within Bossier City used by Cooper is an acceptable configuration from the standpoint of district shape.

151. Using the current precinct lines in Bossier Parish in place at the time of the 1992 School Board redistricting, the NAACP Plan creates 46 precinct splits, and the Cooper Plan causes 27. Using the 1990 precinct lines in existence at the time of the 1990-1991 Police Jury redistricting, the NAACP Plan causes 22 precinct splits, and the Cooper Plan causes 25.

152. It is impossible to draw, on a precinct level, a black-majority district in Bossier Parish without cutting or splitting existing precinct lines.

History of Black Electoral Success in Bossier Parish after 1980

153. No black candidate ever has been elected to the Bossier Parish School Board. Since 1980, black candidates have run for election to the School Board on four occasions.

154. In the October 17, 1981 primary election for School Board District C (28.1 percent black in total population based upon the 1980 Census), black candidate Floyd Coleman received 389 votes (38.5 percent), white candidate Annie Johnston received 401

votes (39.7 percent), white candidate Ken Larsen received 150 votes (14.8 percent) and white candidate Nonnie Moak received 71 votes (7.0 percent). Coleman was defeated in the November 28, 1981 runoff election, in which he received 584 votes (40.5 percent) and his white opponent, Annie B. Johnston, was elected with 858 votes (59.5 percent).

155. In the September 27, 1986 election for School Board District J (30.1 percent black in total population based upon the 1990 Census), black candidate Jeff Darby was defeated. Darby received 343 votes (45.7 percent) and his white opponent, Ruth Sullivan (who was the incumbent) was elected with 408 votes (54.3 percent).

156. In the October 6, 1990 election for School Board District J (30.1 percent black in total population based upon the 1990 Census), black candidate Johnny Gipson was defeated. Gipson received 430 votes (46.8 percent) and his white opponent, Ruth Sullivan (who was the incumbent), was reelected with 489 votes (53.2 percent), a difference of 59 votes. District J has a white majority and consists of two precincts.

157. In the April 3, 1993 special election for School Board District K (11.3 percent black in total population based upon the 1990 Census), a black candidate, Jerome Blunt (who was the appointed incumbent), was defeated. Blunt received 93 votes (23.9 percent) and his white opponent, Juanita Jackson, was elected with 296 votes (76.1 percent).

158. Since 1980, black candidates also have sought election to the Bossier Parish Police Jury; only one black candidate has been elected to the Bossier Parish Police Jury since 1980.

159. In the October 22, 1983 election for Police Jury District 7 (29.3 percent black in total population based on the 1980 Census), black candidate James Abrams received 358 votes (22.1 percent), white candidate Jerry Baker received 385 votes (23.8 percent) and white candidate Pete Glorioso won with 875 votes (54.1 percent).

160. In the October 22, 1983 election for Police Jury District 10, black candidate Jerome Darby received 407 votes (33 percent), black candidate Johnny Gipson received 260 votes (21 percent), and white candidate Tom McDaniel received 568 votes (46 percent). Darby prevailed in the November 19, 1983 runoff election with 328 votes (53.2 percent) to McDaniel's 289 votes (46.8 percent).

161. In 1983, Police Jury District 10 was 37.9 percent black in total population based upon the 1980 Census, and consisted of two precincts: 2-15 and 2-16. Precinct 2-15 included Barksdale Air Force Base and population areas adjacent to the base; precinct 2-16 also was comprised of population areas adjacent to the base.

162. Many of the residents in and around Barksdale Air Force Base are military population who do not vote. Police Jurors have testified that, as a result, the proportion of actual voters on election day in District 10 who are black is closer to 45 percent, and may even be a majority.[3] As a further result

[3] According to the 1990 Census, the total population of Precinct 2-15 (in 1990) is 5,440; the total voting age population of the precinct is 3,703, of whom 61 percent were non-Hispanic white and 32 percent were non-Hispanic black. The Census block that comprised the Air Force Base portion of the precinct in 1990 contained a total population of 3,327, of whom 75 percent were non-Hispanic white and 22 percent

of the inclusion of the military base area in District 10, many of the white voters in that district are from areas outside Bossier Parish and outside Louisiana. According to police jurors, because of that area's distinctive character, black community leaders "have a good chance" of being elected in the district. The circumstances described above are unique to this area of the parish and therefore to districts that include this area.

163. According to the plaintiff's expert, most of the Air Force base personnel do not vote in Bossier Parish. Out of approximately 6,000 military personnel and dependents, it is not unusual to have only 100 or so votes cast in a local election. In effect, Darby's local neighborhood is electing the Police Juror for that district; in that sense, the district is a "stealth district," according to Joiner. Many military retirees also settle permanently in this area. The bulk of these retirees are not from Bossier Parish originally, and thus would tend on average to vote in a less polarized way.

164. In the October 24, 1987 primary election for Police Jury District 10, the black incumbent, Jerome Darby, was reelected with 506 votes (60.5 percent). Another black candidate, Johnny Gipson, received 146 votes (17.4 percent) and the white candidate, Tom McDaniel, received 185 votes (22.1 percent).

165. In the only election held to date under the 1991 redistricting plan for the Police Jury (on October 19, 1991), black incumbent Jerome Darby was reelected without opposition.

---

were non-Hispanic black. If that Census block is removed from the precinct, the total voting age population is 1,447, of whom 46 percent are non-Hispanic white and nearly 50 percent non-Hispanic black. As of April 29, 1989, there were 1,229 registered voters in Precinct 2-15, of whom 55 percent were white and 44 percent were black.

166. In the October 19, 1991 election for Police Jury District 7 (43.87 percent black in total population according to the 1990 Census), the white incumbent, Pete Glorioso was reelected with 1,099 votes (64.5 percent). His black opponent, Leonard Kelly, received 604 votes (35.5 percent).

167. Black candidates experienced limited success in municipal election contests against white opponents in Bossier Parish during the 1980s. In two instances in which a black candidate was elected to municipal office in the 1980s, however, he was unsuccessful in seeking reelection in the 1990s.

168. Bossier City, which includes more than half the population of Bossier Parish, is the largest municipality wholly contained in the parish. According to the 1990 Census, Bossier City had a total population of 52,721 of whom 40,895 (77.57 percent) were non-Hispanic white persons and 9,463 (17.95 percent) were non-Hispanic black persons.

169. In the March 30, 1985 election for Bossier City Council District 3 (17 percent black in total population based on the 1990 Census), black candidate Odis Easter was defeated with 214 votes (17.2 percent) to white candidate Wanda Bennett's 1,033 votes (82.8 percent).

170. In the April 1, 1989 election for Bossier City Councilman at Large (two positions), black candidate Don Rushing came in last with 2,222 votes (11.84 percent) against three white candidates.

171. In the April 1, 1989 election for Bossier City Council District 4 (18.9 percent black in total population based on the 1990 Census), black candidate Earl

Smith came in last with 137 votes (7.4 percent) against two white candidates.

172. In the April 1, 1989 election for Bossier City Council District 2 (25.6 percent black in total population based on the 1990 Census), black candidate Jeff Darby advanced to the runoff after receiving 356 votes (33.27 percent) against two white candidates. In the April 29, 1989 runoff, Darby was elected with 631 votes (51.47 percent) against his white opponent, Donald Brown, who received 595 votes (48.5 percent). At the time of the election, District 2 was similar in configuration to Police Jury District 10 and included Barksdale Air Force Base and adjacent population.

173. In the October 16, 1993 special election for Bossier City Council District 2 (which was reduced to 24.3 percent black in total population under the 1993 redistricting plan), black incumbent Jeff Darby was defeated with 416 votes (46.7 percent) to 474 votes (53.3 percent) received by his white opponent, Jim Sawyer. Under the 1993 plan, much of the Barksdale Air Force Base area was removed from the district.

174. Black candidates also have run against white candidates for municipal office in Haughton. According to the 1980 Census, Haughton had a total population of 1,510 of whom 1,034 (68.48%) were non-Hispanic white persons and 456 (30.20%) were non-Hispanic black persons. In Haughton, elections for the Board of Aldermen are at large, in which five seats are to be filled and each voter has five votes to cast.

175. The April 7, 1984 Haughton Alderman election featured 11 candidates, three of whom were black.

Black candidate James Bell, who received the highest number of votes (396), was elected along with two white candidates, Conrad Isom and Shirley Stephens, who received 357 and 341 votes, respectively. Black candidate Cashie Cole, Jr., who received 237 votes, was forced into a run-off with three white candidates —John D. Garland, Jr. (213 votes), Billy Joe Maxey (230 votes) and M.H. Walker, Jr. (228 votes). The third black candidate, Johnny Ruffin, who received 211 votes, did not receive enough votes to advance to the runoff.

176. In the May 5, 1984 runoff election for Haughton Alderman, Cashie Cole Jr. was elected with 236 votes, but he subsequently lost his bid for reelection. In October 1992, he finished sixth out of a field of seven candidates with only 13.9 percent of the votes cast.

177. In the October 19, 1991 election for Haughton Mayor, black candidate Mark Hill placed last with 67 votes (10.8 percent). White candidate George J. Hunter received 97 votes (15.6 percent) and the white incumbent, Cecil L. Blackstock, was reelected with 458 votes (73.6 percent).

178. According to the 1990 Census, the Town of Benton had a total population of 2,047 of whom 1,166 (56.96 percent) were non-Hispanic white persons, 846 (41.33 percent) were non-Hispanic black persons and 35 (1.71 percent) were other minorities.

179. In the March 10, 1992 election for Mayor of Benton, black candidate Thelma Harry received 218 votes (36.2 percent), white candidate Joe Stickell was elected with 378 votes (62.8 percent) and another white candidate, Ronny P. Vaughn, received 6 votes (1.0 percent).

180. Black candidates have won elections in Bossier Parish from majority-white districts.

Racially Polarized Voting Patterns

181. Police Juror Burford's understanding in 1991 was that at least 80 percent of black and white voters voted for candidates of their own race, and that the crossover rate, *i.e.*, voting for candidates of the other race, was generally 20 percent although sometimes it could be even lower. To some extent, voting patterns in Bossier Parish are affected by racial preferences.

182. As one element of proof of the existence of racially polarized voting in Bossier Parish, the United States presented the analysis and testimony of Dr. Richard Engstrom. Dr. Engstrom is a professor of political science at the University of New Orleans with extensive experience in the statistical analysis of electoral behavior. Dr. Engstrom has been recognized as an expert witness in this field in numerous vote dilution cases in federal courts and has served as a court-appointed expert in this regard.

183. Dr. Engstrom's analysis covered the only parish-wide election for local office in recent years (1988 primary election for a seat on the 26th Judicial District Court), as well as the last three elections for seats on the Bossier Parish School Board in which voters in the respective districts were presented with a choice between black and white candidates (1986, 1990 and 1993). In addition, he examined the vote in the six other elections in the parish during the 1990s in which voters were presented with a choice between black and white candidates. Dr. Engstrom's analysis sought to determine the extent to which black voters supported black

candidates and the extent to which white voters supported white candidates.

184. Bivariate ecological regression analysis is based upon the correlation between the proportion of the votes received in each precinct and the proportion of black or white voters in each such precinct. Based upon his analysis of the 1988 primary election for the seat on the 26th Judicial District Court, Dr. Engstrom found that there was a very consistent relationship between the percentage of those signing in to vote who were black in each precinct and the percentage of the votes received by the black candidate, Bobby Stromile, in the precincts. The estimate of support for Stromile among black voters was 79.2 percent, while the estimate of support for Stromile among white voters was only 28.9 percent.

185. Homogeneous precinct analysis simply tabulates the votes cast in precincts with overwhelmingly black and overwhelmingly white populations. These analyses support the estimates produced by ecological regression analysis. In the 1988 primary election, over 90 percent of the people signing in to vote were white in 25 of the 43 precincts in Bossier Parish. Stromile received only 31.3 percent of the votes cast in those 25 precincts, while his white opponent received 69.9 percent of the vote in those precincts. There were no homogeneous black precincts in the parish (the highest percentage of black voters among those signing in to vote was only 75.1 percent).[4]

186. Dr. Engstrom examined two elections for School Board District J: one in 1986, in which Jeff Darby was the black candidate who competed with

---

[4] The plaintiff does not dispute the assertions in paragraphs 183 through 185, but maintains that they are irrelevant.

one white candidate, and one in 1990, in which Johnny Gipson was the black candidate, who competed against the same white candidate. District J was comprised of only two precincts and thus does not provide sufficient data to perform a regression analysis. Precinct 2-15 was racially mixed and Precinct 2-16 was homogeneously white. In Precinct 2-16, 97.4 percent of those signing in to vote in 1990 were white and 99.2 percent of those registered to vote in September of 1986 were white (sign-in data by race are not available for elections prior to 1988). In both these elections, precinct 2-16 supported the white candidate. Gipson received 31.8 percent of the votes cast in that precinct in 1990 and Darby received 26.6 percent in 1986. Both Gipson and Darby won, however, in Precinct 2-15 in their respective elections. In Precinct 2-15, 48.9 percent of those signing in to vote in 1990 were black and 48.9 percent of those registered to vote in September 1986 were black. Gipson received 73.5 percent of the votes cast in Precinct 2-15 in 1990 and Darby received 75.9 percent of the votes cast in that precinct in 1986. The contrast in candidate support as between these two precincts suggests that the black candidates were the choice of the black voters in these elections, but were not the choice of the white voters.

187. In the 1993 special election for School Board District K (11.3 percent black according to the 1990 Census), in which the appointed black incumbent, Jerome Blunt, was defeated by a white opponent, only nine of the 430 people who signed in to vote were black. Even if every vote Blunt received had been cast by a white voter and every black voter who signed in to vote had cast a ballot for Blunt's opponent, Blunt still would have received only 37.1 percent of the white votes in the election. While it is not possible to determine whether Blunt was the choice of black voters, he clearly was not the choice of white voters.

188. Dr. Engstrom also examined the vote in police jury and municipal elections during the 1990s in which voters were presented with a choice between black and white candidates.

189. In the 1991 election for Police Jury District 7, a black candidate, Leonard Kelly, was defeated by the white incumbent, who received 64.5 percent of the vote. A regression analysis of the five precincts produced an estimated black vote for Kelly of 41.5 percent and a white vote of 33.8 percent. Only two precincts were racially homogeneous and both were white. He received 38.3 percent of the votes in those precincts. Thus, Kelly was not the choice of either black or white voters.

190. In the 1993 Bossier City special election, Jeff Darby, the black incumbent in District 2, faced one white opponent and black candidate Will Jones ran in District 1 against two white opponents. This was the first election held under the new 1993 redistricting plan for the Bossier City Council. The election was delayed until October 16, 1993 because the new redistricting plan had not been precleared in time for the regularly scheduled April 6, 1993 election. Turnout was extremely low in these two districts. Fewer than 25 percent of the eligible registered voters cast ballots in the District 2 contest and approximately 29 percent of the eligible voters in District 1 signed in to vote in the election.

191. Bossier City Council District 2 is comprised of three whole precincts and portions of four others.

Based upon Dr. Engstrom's regression analysis, Darby is estimated to have received 61.0 percent of the votes cast by blacks and 41.3 percent of the votes cast by whites. The correlation coefficient for the relationship between the percentage of the votes received by Darby and the racial composition of the precincts in District 2 is .549. This coefficient, based on only seven precincts, is not statistically significant. In the homogeneous white precincts, Darby received 45.7 percent of the votes cast.

192. All five of the precincts in Bossier City District 1 were homogeneously white. The percentage of people signing in to vote in these precincts who were black ranged from 2.3 to 8.2. Although it is not possible to determine whether the black candidate was the choice of black voters, it is clear that he was not the choice of white voters, having received only 10.1 percent of the votes cast in this election.

193. In the 1992 mayoral election for the Town of Benton, blacks comprised 38.3 percent of the people signing in to vote and the black candidate, Thelma Harry, received 36.2 percent of the votes cast. Because the votes were cast in a single precinct, it is not possible to produce estimates of the votes by race.

194. In 1992, Cashie Cole, Jr., a black incumbent on the Haughton Board of Aldermen, was defeated in his bid for reelection. All of the votes cast in the election were cast in a single precinct so that no estimates of the votes by race can be produced. Blacks comprised 25.6 percent of the people signing in to vote and Cole finished sixth in a field of seven candidates, with 13.9 percent of the votes cast in this at-large election.

195. In the 1991 mayoral election in Haughton, also held in one precinct, 25.4 percent of those signing in to vote were black and the black candidate, Mark Hill, finished last among three candidates, with only 10.8 percent of the votes cast.

196. Of the 14 elections since 1980 in which black candidates have run against white candidates for a single-member district or for mayor, only two candidates have won. Jerome Darby defeated a white opponent on two occasions in Police Jury District 10, which included population in and around Barksdale Air Force Base, and Jeff Darby defeated white candidates in Bossier City District 2, which also included population in and around Barksdale Air Force Base in 1989, but lost his bid for reelection after much of that population was removed from the district in 1993.

Relationship Between Depressed Levels of Socioeconomic Status and Political Participation Among Black Citizens of Bossier Parish

197. According to pre-election statistics for the April 3, 1993 election prepared by the Department of Elections and Registration, the total number of registered voters in Bossier Parish was 40,356 of whom 33,755 (83.6 percent) were white and 6,279 (15.6 percent) were black. Thus, as of the April 3, 1993 election, 70.1 percent of the 1990 Census white voting age population were registered to vote, while only 58.5 percent of the 1990 Census black voting age population were registered to vote. Current voter registration statistics reveal similar disparities. As of October 28, 1994, Bossier Parish had 38,870 registered voters, of whom 32,474 (83.5 percent) were white and 6,044 (15.5 percent) were black. Thus, 67.5 percent of the white voting age population were

registered to vote, while only 56.3 percent of the black voting age population were registered to vote.

198. Turnout statistics prepared by the Department of Elections and Registration also reveal a pattern of lower turnout rates among black voters than among white voters in Bossier Parish.

199. Education, income, housing and employment are considered standard measures of socioeconomic status. These factors repeatedly have been found to translate into political efficacy.

200. Black citizens of Bossier Parish suffer a markedly lower socioeconomic status than their white counterparts. This lower socioeconomic status is traceable to a legacy of racial discrimination affecting Bossier Parish's black citizens.

201. According to the 1990 Census, the per capita income of whites in Bossier Parish in 1989 was $12,966, while the per capita income of blacks in Bossier Parish in 1989 was $5,260.

202. According to the 1990 Census, the proportion of white families in Bossier Parish below the poverty level in 1989 was 6.8 percent, and the proportion of black families in Bossier Parish below the poverty level in 1989 was 40.2 percent.

203. According to the 1990 Census, the proportion of white persons in Bossier Parish below the poverty level in 1989 was 8.7 percent, and the proportion of black persons in Bossier Parish below the poverty level in 1989 was 42.7 percent.

204. According to the 1990 Census, 4.8 percent of white persons in Bossier Parish 25 years of age and older had less than a ninth grade education, and 22.8 percent of black persons 25 years of age and older had less than a ninth grade education.

205. According to the 1990 Census, the proportion of white persons in Bossier Parish 25 years old and over who were at least high school graduates (including equivalency) was 83.3 percent, and the proportion of black persons in Bossier Parish 25 years old and over who were at least high school graduates (including equivalency) was 58.7 percent.

206. According to the 1990 Census, the proportion of white persons in Bossier Parish 25 years old and over who had at least four years of college was 17.0 percent, and the proportion of black persons in Bossier Parish 25 years old and over who had at least four years of college was 8.1 percent.

207. According to the 1990 Census, the proportion of white persons in the labor force of Bossier Parish who were unemployed was 2.9 percent, and the proportion of black persons in the labor force of Bossier Parish who were unemployed was 9.1 percent.

208. According to the 1990 Census, 4.2 percent of the housing units in Bossier Parish occupied by white persons had no vehicle available, and 25.9 percent of the housing units occupied by black persons in Bossier Parish had no vehicle available.

209. According to the 1990 Census, the proportion of occupied housing units in Bossier Parish owned by their occupants was 70.6 percent among white persons and 49.4 percent among blacks.

210. According to the 1990 Census, 0.3 percent of owner-occupied housing units in Bossier Parish with a white householder lacked complete plumbing for exclusive use, whereas 7.2 percent of owner-occupied housing units with a black householder lacked such facilities. The percentage of black households without access to vehicles (25.9%) is over six times higher

than the comparable percentage (4.2%) for white households.

211. According to the 1990 Census for Bossier Parish, the poverty rate for black persons (44.7%) is nearly five times the rate for white persons (9.1%). The per capita income of black persons ($5,260) is only 40 percent of that enjoyed by whites ($12,966). The unemployment rate for black persons aged 16 and over (22.4%) is nearly four times that for whites.

212. According to the 1990 Census for Bossier Parish, the socioeconomic disparities are matched by similarly severe disparities in education. The percentage of black persons over 25 without a high school degree (40.6%) is over twice the comparable rate (16.7%) for whites.

213. The depressed socioeconomic and educational levels of black persons within Bossier Parish, coupled with their limited access to vehicular transportation, makes it harder for blacks to obtain necessary electoral information, organize, raise funds, campaign, register, and turn out to vote, and this in turn causes a depressed level of political participation for black persons within Bossier Parish.

History of Official Racial Discrimination

214. Slavery was sanctioned by law in Louisiana prior to the ratification of the Thirteenth Amendment and vestiges of discrimination persist which affect the rights of black persons to register, to vote or otherwise participate in the democratic process.

215. In 1896, 126,849 black persons and 153,174 white persons were registered to vote in Louisiana, according to the 1902 Report of the Secretary of State of Louisiana.

216. In 1896, the Louisiana legislature adopted two new laws designed to disenfranchise black voters. One law provided a complex new Australian ballot and prohibited election officials from assisting illiterates. The other required all voters to reregister using a complex application form, prohibited explanation of application questions, and facilitated wholesale purges by either registrars or party officials of individual voters who managed to register successfully. Discriminatory application of the new laws reduced black registration by 90 percent, leaving only 10 percent of adult black males on the rolls. J. Morgan Kousser, *The Shaping of Southern Politics: Suffrage Restriction and the Establishment of the One-Party South, 1880-1910* (New Haven, Ct., Yale University Press, 1974), 160-63.

217. The State of Louisiana's Constitutional Convention of 1898 imposed a "grandfather" clause as well as educational and property qualifications for voter registration which were designed to limit black political participation.

218. Implementation of the disfranchising devices in the 1898 constitution reduced blacks to about 4 percent of the state's registered voters, although they made up approximately half the state's population. *United States* v. *State of Louisiana*, 225 F. Supp. 353, 373 (E.D. La. 1963). *See generally*, Richard Engstrom, *et al.*, *Louisiana*, in *Quiet Revolution in the South* 103-135 (Chandler Davidson and Bernard Grofman, eds., 1994).

219. On March 17, 1900, 5,320 black persons and 125,438 white persons were registered to vote in Louisiana, according to the 1902 Report of the Secretary of State of Louisiana.

220. In 1921, the state Democratic Party established, pursuant to state law, an all-white primary which was used until 1944.

221. In 1921, the state amended its constitution and replaced the "grandfather" clause with a requirement that an applicant "give a reasonable interpretation" of any section of the federal or state constitution. The United States Supreme Court in *Louisiana* v. *United States*, 380 U.S. 145 (1965), held this "interpretation" test to be one facet of the state's successful plan to disenfranchise its black citizens.

222. Following the invalidation of the all-white primary in 1944, the state adopted such electoral devices as citizenship tests, anti-single-shot laws, and a majority vote requirement for party officers. *Major* v. *Treen*, 574 F. Supp. 325, 341 (E.D. La. 1983).

223. Following the decision of the U.S. Supreme Court in *Brown* v. *Board of Education*, 347 U.S. 483 (1954), outlawing segregation in public schools, the Louisiana legislature in 1954 established a joint committee chaired by State Senator Willie Rainach. Popularly known as the "Segregation Committee," the committee's stated purpose was "to provide ways and means whereby our existing social order shall be preserved," in order "to maintain segregation of the races in all phases of our life in accordance with the customs, traditions, and laws of our State." *United States* v. *State of Louisiana*, 225 F. Supp. 353, 378 (E.D. La. 1963).

224. Senator Rainach was among the founders of the Louisiana Association of Citizens' Councils, which published in 1956 a pamphlet entitled "Voter Qualification Laws in Louisiana—The Key to Victory in the Segregation Struggle." In the pamphlet the organization urged its members to initiate a purge campaign to challenge the right to vote of "the great numbers of unqualified voters who have been illegally registered," and who, according to the pamphlet, "invariably vote in blocks and constitute a menace to the community." The pamphlet's subtitle was: "A Manual of Procedure for Registrars of Voters, Police Jurors and Citizens Councils." The state government distributed the pamphlet to parish registrars with instructions to follow its guidelines as closely as possible. *United States* v. *State of Louisiana*, 225 F. Supp. 353, 378 (E.D. La. 1963).[5]

225. Published congressional hearings on the Voting Rights Act included quantitative evidence concerning racial discrimination in voter registration in Louisiana, drawn from the various federal court cases filed by the Department of Justice. In addition, the hearings reproduced evidence of racial disparities in educational expenditures by the state over several decades together with documentation that these disparities were a product of the state's official policy of racial discrimination in education. *Hearings Before the Committee on the Judiciary, United States Senate, Eighty-Ninth Congress, First Session . . . Part 2* (Washington, D.C., G.P.O., 1965), 1103-59, 1189, 1191-92, 1199-1201, 1208-10, 1220-21, 1224-26, 1229-34, 1250-52, 1263-70, 1280-81, 1412-41, 1447-55, 1479-84. Congress and the federal courts have concluded that such educational disadvantages, typically correlated with disparities in socioeconomic status, tend to depress voter registration and turnout, as well as other forms of political participation.

---

[5] The plaintiff does not dispute the assertions in paragraphs 214 through 223, but maintains that they are irrelevant.

S. Rep. No. 97-417, at 29, citing *White* v. *Regester*, 412 U.S. 755, 768 (1973), and *Kirksey* v. *Board of Supervisors*, 554 F.2d 139, 145 (5th Cir. 1977) (en banc).

226. In 1964, the year before adoption of the Voting Rights Act, 14 percent of the nonwhite voting-age population in Louisiana was registered to vote, yet 86 percent of the white voting-age population was on the registration rolls. United States Commission on Civil Rights, *Political Participation* (Washington, D.C., G.P.O., 1968), 242-43. This disparity was the result of a series of discriminatory election laws, according to the United States Supreme Court, which enjoined further use of the state's requirement that prospective voters demonstrate to the satisfaction of local registrars that they could understand or interpret a passage from the state or federal constitutions. *Louisiana* v. *United States*, 380 U.S. 145, 147-51 (1965). This registration test, like its predecessors, was racially neutral on its face but had been administered in a racially discriminatory manner. *Id.* at 150, 153.

227. The State of Louisiana and its subjurisdictions, including Bossier Parish, are subject to the preclearance provision (Section 5) of the Voting Rights Act of 1965 because in 1965 the state employed a "test or device," as defined in the Act, as a prerequisite to register to vote and less than 50 percent of the state's voting age population (at that time, 21 years of age or older) voted in the 1964 presidential election.

228. Since 1965, the United States Attorney General has designated twelve Louisiana parishes, including Bossier Parish, which was designated on March 23, 1967, for the appointment of federal examiners

pursuant to Section 6 of the Voting Rights Act, 42 U.S.C. section 1973d.

229. In 1968, Louisiana altered its policy prohibiting the use of at-large elections for parish police juries and school boards by the adoption of two statutes enabling both types of local governing bodies to use parish-wide elections rather than realign their single-member districts. The state was required by the decision of the U.S. Supreme Court in *Allen* v. *State Board of Elections*, 393 U.S. 544 (1969), to submit these changes for review by the Department of Justice pursuant to Section 5 of the Voting Rights Act. On June 26, 1969, the Attorney General objected under Section 5 to the two state enabling acts on the grounds that at-large elections would in many instances, if implemented, "have the effect of discriminating against Negro voters on account of their race." See objection letter of June 26, 1969, objecting to Acts 445 and 561 of 1968, and the discussion in *Zimmer* v. *McKeithen*, 485 F.2d 1297, 1301-02 n. 7 (5th Cir. 1973) (en banc).

230. In 1971, the legislature incorporated multi-member districts in the Shreveport metropolitan areas, including Bossier Parish, and in other areas, into its redistricting plans for both state senate and house. The Attorney General objected under Section 5 of the Voting Rights Act, citing both the dilution caused by multi-member districting and the fragmentation of black voting strength in each area. The U.S. District Court hearing a constitutional challenge to the state's redistricting plan observed that had the Attorney General not objected, he would have found the districting plan unconstitutional because it was malapportioned, diluted minority voting strength, and employed "gerrymandering in its grossest form."

Bussie v. *Governor of Louisiana*, 333 F. Supp. 452, 454 (E.D. La. 1971). The court ordered legislative elections to be held under its own interim plan, relying exclusively on single-member districts.

231. A U.S. Commission on Civil Rights publication, *The Voting Rights Act: Ten Years After* (Washington, D.C., 1975), listed 12 parishes, including Bossier Parish, in which minority plaintiffs filed lawsuits challenging police jury and school board redistricting plans enacted in the 1970s.

232. The Department of Justice objected to the 1991 redistricting plans for the Louisiana state house, in part, because the Justice Department determined that the district alignments appeared to minimize black voting strength in and around Bossier Parish.

233. Public accommodations and facilities in the State of Louisiana were not open to members of both races until the late 1960s.

234. The State of Louisiana maintained a dual university system until at least 1981.

235. After 1954, school boards in Louisiana failed to abolish *de jure* segregation in the public schools voluntarily, and it was necessary for local federal courts to issue decrees in order to obtain compliance with federal law.

236. The Bossier Parish School Board is the defendant in *Lemon* v. *Bossier Parish School Board*, C.A. No. 10,687 (W.D. La.), in which it was found liable for intentionally segregating the public schools of Bossier Parish in violation of the Fourteenth Amendment to the United States Constitution. *Lemon* v. *Bossier Parish School Board*, 240 F. Supp. 709 (W.D. La. 1965).

237. The Bossier Parish School Board for years sought to limit or evade its desegregation obligations.

The School Board sought to assign black children of Barksdale Air Force Base personnel to black schools without a right to transfer to white schools, claiming that they were "federal children" and not within the "jurisdiction" of the school district. Judge Wisdom rejected the School Board's "new and bizarre excuse for rationalizing [its] denial of the constitutional right of Negro school children to equal educational opportunities as white children." *Bossier Parish School Board* v. *Lemon*, 370 F.2d 847, 849 (5th Cir. 1967).

238. The Fifth Circuit also rejected the school district's subsequent attempt to implement a "freedom of choice plan," *Hall* v. *St. Helena Parish School Board*, 417 F.2d 801 (5th Cir. 1969), and after "protracted litigation" subsequently rejected yet another inadequate remedial plan proposed by the district. *Lemon* v. *Bossier Parish School Board*, 421 F.2d 121 (5th Cir. 1970). The School Board then attempted to assign students to one of two schools in Plain Dealing based on their success on the California Achievement Test. The Fifth Circuit rejected this effort as well. *Lemon* v. *Bossier Parish School Board*, 444 F.2d 1400 (5th Cir. 1971).

239. In 1979, the School Board filed a motion seeking a declaration of unitary status and release from further court supervision. The motion was denied.

240. Notwithstanding the requirements of the order in *Lemon* concerning the desegregation of its faculty and staff, since 1980, the School Board has assigned an increasingly disproportionate number of black faculty to schools with predominantly black student enrollments and has reduced the percentage of black teachers in the school district from 14 per-

cent to less than 10 percent. As of March 1994, while fewer than 10 percent of the district's teachers were black, the School Board assigned faculties that were more than 20 percent black to the five predominantly black schools in the district. The School Board assigned a faculty that was more than 70 percent black to one school, Butler Elementary. The School Board assigned more than half of its 113 black teachers to seven of its 28 schools and one or fewer black teachers to ten of its schools.

241. Since 1980, despite the Bossier Parish School Board's affirmative duty to desegregate, the number of elementary schools with predominantly black student enrollments has increased from one to four.

242. As of the 1993-94 school year, the Bossier Parish School Board assigned predominantly black student enrollments to five of its 27 regular schools. Despite the fact that the overall racial composition of the school district's student population is 29 percent black, four of these schools have student bodies that are more than 70 percent black.

243. As of the 1993-94 school year, the School Board also maintained six schools in which the white enrollment was greater than 80 percent, and two schools in which the white enrollment is greater than 90 percent. Of the 16 regular elementary schools, four had predominantly black student enrollments, and five had student enrollments that were more than 80 percent white.

244. Blacks and whites today are treated identically by public officials in registering to vote, filing for public office and voting in primaries and general elections. No black individual or black person representing a black organization has been denied the right

to speak to the Bossier Parish School Board at its public meetings.

245. No black in the past two decades has filed a suit or an official protest alleging that his right to register to vote, file for public office, or to vote in a primary or general election has been hampered or interfered with.[a]

246. On July 26, 1991, Gary W. Moore, a resident of Bossier Parish, pled guilty to conspiring to oppress, threaten and intimidate minority individuals of the State of Louisiana in the free exercise and enjoyment of rights, including the right to vote, secured to them under the Constitution and laws of the United States. As set forth in the Bill of Information to which Moore pled guilty, Moore willfully conspired to join with others, under the cover of darkness, to burn numerous crosses at chosen places in and around Shreveport. July 27, 1991, *Shreveport Times*, *Meridian Star*; see also, May 30, 1991, *Shreveport Times*.

247. On July 26, 1991, Herbert D. Haynes, a resident of Bossier Parish, pled guilty to conspiring to oppress, threaten and intimidate minority individuals of the State of Louisiana in the free exercise and enjoyment of rights, including the right to vote, secured to them under the Constitution and laws of the United States. As set forth in the Bill of Information to which Haynes pled guilty, Haynes willfully conspired to join with others, under the cover of darkness, to burn numerous crosses at chosen places in and around Shreveport. July 27, 1991, *Shreveport Times*, *Meridian Star*; see also, May 30, 1991, *Shreveport Times*.

---

[a] The defendant and defendant-intervenors do not dispute this assertion, but maintain that it is irrelevant.

248. On July 12, 1991, Edward Wayne McGee, a resident of Bossier Parish, pled guilty to conspiring to oppress, threaten and intimidate minority individuals of the State of Louisiana in the free exercise and enjoyment of rights, including the right to vote, secured to them under the Constitution and laws of the United States. As set forth in the Bill of Information to which McGee pled guilty, McGee willfully conspired to join with others, under the cover of darkness, to burn numerous crosses at chosen places in and around Shreveport. July 27, 1991, *Shreveport Times*; July 28, 1991, *Meridian Star*; see also, May 30, 1991, *Shreveport Times*.[7]

CONCLUSIONS OF LAW

249. Section 5 of the Voting Rights Act of 1965, 42 U.S.C. 1973c, prohibits a covered jurisdiction like the Bossier Parish School Board from implementing any "voting qualification or prerequisite to voting, or standard, practice, or procedure with respect to voting different from that in force or effect on November 1, 1964" unless and until it has proven to either this Court or the Attorney General that the voting change at issue "does not have the purpose and will not have the effect of denying or abridging the right to vote on account of race or color."

250. In an action for a declaratory judgment under Section 5, the burden of proof is on the plaintiff. *South Carolina* v. *Katzenbach*, 383 U.S. 301, 328 (1966).

251. To sustain that burden, the Bossier Parish School Board must demonstrate the absence of both

[7] The plaintiff does not dispute the assertions in paragraphs 245 through 247, but maintains that they are irrelevant.

discriminatory purpose and discriminatory effect in the adoption and maintenance of its 1992 redistricting plan. *City of Rome* v. *United States*, 446 U.S. 156, 172 (1980); *City of Richmond* v. *United States*, 422 U.S. 358, 378-379 (1975). In addition, the plan may not be precleared pursuant to Section 5 if implementation of the plan will result in a violation of Section 2 of the Voting Rights Act of 1965, as amended, 42 U.S.C. 1973.

252. The 1992 redistricting plan is not retrogressive to minority voting strength compared to the existing benchmark plan and therefore will not have a discriminatory effect, as that term has been construed by the Supreme Court in *Beer* v. *United States*, 425 U.S. 130 (1975). The reductions here are *de minimis*. But this does not end the inquiry. As this Court has recognized, "nonretrogression is not the only test for compliance with the Voting Rights Act." *Busbee* v. *Smith*, 549 F. Supp. 494, 516 (D.D.C. 1982). Even if a plan increases black voting strength, plaintiff is not entitled to the declaratory judgment unless it can also demonstrate the absence of a racially discriminatory purpose. *Ibid.*

253. The inquiry into whether the plan has a discriminatory purpose requires an examination into any circumstantial or direct evidence of intent that is available. *Village of Arlington Heights* v. *Metropolitan Housing Development Corp.*, 429 U.S. 252, 266 (1977); *Rogers* v. *Lodge*, 458 U.S. 613, 618 (1982). "(I)nvidious discriminatory purpose may often be inferred from the totality of the relevant facts." *Washington* v. *Davis*, 426 U.S. 229, 242 (1976). Relevant areas of inquiry include: (1) the historical background of the decision; (2) the sequence of events leading up to the action taken;

(3) procedural departures from the customary decisional process; (4) substantive departures from the normal process; and (5) the legislative or administrative history, including contemporary statements by the members of governing body, minutes of their meetings, and any testimony by the decision makers regarding their intent. *Village of Arlington Heights* v. *Metropolitan Housing Development Corp., supra,* 429 U.S. 267-68; see *Garza* v. *County of Los Angeles,* 918 F.2d 763, 771 (9th Cir. 1990). In obtaining a declaratory judgment that the proposed plan is free of any racially discriminatory purpose, the plaintiffs must show the absence of such factors.

254. The impact of the official action on the minority group often provides "an important starting point" to the determination of whether invidious intent is implicated. *Village of Arlington Heights* v. *Metropolitan Housing Development Corp., supra,* 429 U.S. at 266; *Busbee* v. *Smith, supra,* 549 F. Supp. at 517 (three-judge court). As Justice Stevens observed in *Washington* v. *Davis,* "Frequently the most probative evidence of intent will be objective evidence of what actually happened rather than evidence describing the subjective state of mind of the actor. For normally the actor is presumed to have intended the natural consequences of his deeds." 426 U.S. at 253 (concurring opinion).

255. The objective of protecting incumbents' opportunities for reelection is a well recognized political reality of the redistricting process and is not *per se* evidence of racial animus. *Rybicki* v. *State Board of Elections of Illinois,* 574 F. Supp. 1082, 1110-11, n.81 (N.D. Ill. 1982). See also *Burns* v. *Richardson,* 384 U.S. 73, 89, n.16 (1966). But, where, as here, the motive of protecting incumbency necessarily involves

the adoption of a plan that denies minority voters an equal opportunity to elect their preferred candidates to the school board, it may be viewed as evidence of racially discriminatory intent. *Ketchum* v. *Byrne,* 740 F.2d 1389, 1408 (7th Cir. 1984). It has been held in similar circumstances that "the requirements of incumbency are so closely intertwined with the need for racial dilution that an intent to maintain a safe . . . district for [a white incumbent] is virtually coterminous with a purpose to practice racial discrimination." *Rybicki* v. *State Board of Elections of Illinois, supra,* 574 F. Supp. at 1109. Here, plaintiffs must demonstrate that such incumbency considerations did not prevent the drawing of a minority district.

256. A finding of racially discriminatory purpose does not require a finding of racial hatred or animus. *Garza* v. *County of Los Angeles, supra,* 918 F.2d at 778 n.1 (Kozinski, J. concurring in relevant part):

> The lay reader might wonder if there can be intentional discrimination without an invidious motive. Indeed there can. A simple example may help illustrate the point. Assume you are an anglo homeowner who lives in an all-white neighborhood. Suppose, also, that you harbor no ill feelings toward minorities. Suppose further, however, that some of your neighbors persuade you that having an integrated neighborhood would lower property values and that you stand to lose a lot of money on your home. On the basis of that belief, you join a pact not to sell your house to minorities. Have you engaged in intentional racial and ethnic discrimination? Of course you have. Your personal feelings toward

minorities don't matter; what matters is that you intentionally took actions calculated to keep them out of your neighborhood.

257. Section 5 preclearance of the Bossier Parish School Board's redistricting plan also must be denied if the plan violates Section 2 of the Voting Rights Act, as amended, 42 U.S.C. 1973. If this Court concludes that the plaintiff has failed to meet its burden of proof on the issue of purpose or effect, preclearance must be denied and there will be no need to decide whether the plan also violates Section 2 of the Act. However, should this Court find that the Bossier Parish School Board has met its burden of proof on the issues of purpose and retrogression, this Court must also determine whether the plan constitutes a violation of Section 2 for which Section 5 preclearance must be denied. See S. Rep. No. 97-417, 97th Cong., 2d Sess. 12 n.31 (1982); 28 C.F.R. 51.55 (b)(2).

258. Section 2 of the Voting Rights Act prohibits any denial or abridgment of the right to vote on account of race or color. Section 2 provides as follows:

> (a) No voting qualification or prerequisite to voting or standard, practice, or procedure shall be imposed or applied by any State or political subdivision in a manner which results in a denial or abridgement of the right of any citizen of the United States to vote on account of race or color, or in contravention of the guarantees set forth in section 4(f)(2), as provided in subsection (b).
>
> (b) A violation of subsection (a) is established if, based on the totality of circumstances,

> it is shown that the political processes leading to nomination or election in the State or political subdivision are not equally open to participation by members of a class of citizens protected by subsection (a) in that its members have less opportunity than other members of the electorate to participate in the political process and to elect representatives of their choice. The extent to which members of a protected class have been elected to office in the State or political subdivision is one circumstance which may be considered: *Provided*, That nothing in this section establishes a right to have members of a protected class elected in numbers equal to their proportion in the population.

42 U.S.C. 1973 ("Section 2"). See also S. Rep. No. 97-417, 97th Cong., 2d Sess. (1982).

259. Absent proof of intentional discrimination, where vote dilution in violation of Section 2 occurs, "a bloc voting majority must *usually* be able to defeat candidates supported by a politically cohesive, geographically insular minority group." *Thornburg* v. *Gingles*, 478 U.S. 30, 49 (1986) (emphasis in original). In *Gingles*, which involved a challenge to a multimember district system, the Court enunciated three threshold factors that must be present to prove a vote dilution claim under Section 2: (1) the minority group is sufficiently large and geographically compact to constitute a majority in a single-member district; (2) the minority group is politically cohesive; and (3) the white majority votes sufficiently as a bloc to enable it, in the absence of special circumstances, usually to defeat the minority's preferred candidate. 478 U.S. at 49-51. The Supreme

Court recently held that these prerequisites also apply to challenges to redistricting plans under Section 2. *Growe* v. *Emison*, 113 S. Ct. 1075 (1993); *Voinovich* v. *Quilter*, 113 S. Ct. 1149 (1993).

260. When Congress amended Section 2 it intended courts to take "a 'functional' view of the political process," and to make "a searching practical evaluation of the 'past and present reality.'" *Thornburg* v. *Gingles*, *supra*, 478 U.S. at 45; see also *Gomez* v. *City of Watsonville*, 863 F.2d 1407, 1413 (9th Cir. 1988), *cert. denied*, 489 U.S. 1080 (1989).

261. The purpose of the geographic compactness criterion is to determine whether the challenged election plan is causing the violation. As the Supreme Court explained:

> Unless minority voters possess the *potential* to elect representatives in the absence of the challenged structure or practice, they cannot claim to have been injured by that structure or practice. The single-member district is generally the appropriate standard against which to measure minority group potential . . . because it is the smallest political unit from which representatives are elected.

Thornburg v. *Gingles*, *supra*, 478 U.S. at 50, n.17 (emphasis in original). According to the Supreme Court in *Gingles*, the issue is whether there is an alternative to the challenged plan that would provide the minority group with the potential to elect candidates of choice.

262. Voting is racially polarized when racial minority voters vote differently from white voters. *Thornburg* v. *Gingles*, *supra*, 478 U.S. at 53 n.21. The Supreme Court explains that "[t]he purpose of

inquiring into the existence of racially polarized voting is twofold: to ascertain whether minority group members constitute a politically cohesive unit and to determine whether whites vote sufficiently as a bloc usually to defeat the minority's preferred candidates." *Thornburg* v. *Gingles*, *supra*, 478 U.S. at 56. Racially polarized voting is legally significant if minority voters are cohesive in support of their candidates and those candidates are usually defeated by white bloc voting. *Ibid.* The reasons why those racial differences in voting patterns occur are not relevant to the basic polarization inquiry. *Thornburg* v. *Gingles*, *supra*, 478 U.S. at 61-74; 478 U.S. at 100 (O'Connor, J., concurring).

263. According to the Supreme Court in *Gingles*, the statistical method of ecological regression analysis, used here by the expert witness for the United States, is the standard method for establishing racially polarized voting and in most circumstances it produces valid and reliable estimates of voting behavior for racial groups. See, *e.g.*, *Thornburg* v. *Gingles*, *supra*, 478 U.S. at 52-53 & n.20; *Campos* v. *City of Baytown*, *supra*; *Citizens for a Better Gretna* v. *City of Gretna*, 834 F.2d 496 (5th Cir. 1987); *Garza* v. *County of Los Angeles*, 756 F. Supp. 1298, 1331-1334 (C.D. Cal.), *aff'd*, 918 F.2d 763 (9th Cir. 1990), *cert. denied*, 498 U.S. 1028 (1991). In addition, homogeneous precinct analysis (also known as extreme case analysis) and anecdotal testimony can provide further evidence on the polarization issue. See *Romero* v. *City of Pomona*, 883 F.2d 1418 1423; *Garza* v. *County of Los Angeles*, *supra*, 756 F. Supp. at 1332.

264. The racial polarization inquiry in vote dilution cases should focus on contests between minority

candidates and non-minority candidates. A focus on such elections appropriately ties together the two key Senate Report factors: racial polarization and "the extent to which members of the minority group have been elected to public office." S. Rep. No. 97-417, *supra*, at 29 & n.115. In *Citizens for a Better Gretna* v. *City of Gretna*, 834 F.2d 496 (5th Cir. 1987), the Fifth Circuit ruled, "implicit in the Gingles holding is the notion that black preference is determined from elections which offer the choice of a black candidate." *Id.* at 503. See also *Smith* v. *Clinton* 687 F. Supp. 1310, 1316-17 (E.D. Ark. 1988), *summarily aff'd*, 488 U.S. 988 (1988) (three-judge court).

265. Generally, where it is available, the best evidence to measure racially polarized voting is the elections conducted for positions within the challenged election system. Analysis of elections outside the challenged system is appropriate, however, if viable minority candidates have been deterred from seeking office. *Cf. Westwego Citizens for Better Gov't* v. *City of Westwego*, 872 F.2d, 1201, 1208-1209 n.9 (5th Cir. 1989); *McMillan* v. *Escambia County*, 748 F.2d 1037, 1045 (5th Cir. 1984); *Garza* v. *County of Los Angeles*, *supra*, 756 F. Supp. at 1329.

266. After the preconditions have been established, the court must examine the "totality of circumstances" to determine whether minority group members have an equal opportunity to participate in the political process and elect representatives of their choice. *Johnson* v. *De Grandy*, 114 S. Ct. 2647 (1994). Typical factors relevant to an inquiry into the totality of the circumstances include, but are not limited to, the following:

1. the extent of any history of official discrimination in the state or political subdivision that touched the right of the members of the minority community to register, to vote, or otherwise participate in the democratic process;

2. the extent to which voting in the elections of the state or political subdivision is racially polarized;

3. the extent to which the state or political subdivision has used unusually large election districts, majority vote requirements, anti-single-shot provisions or other voting practices or procedures that may enhance the opportunity for discrimination against the minority group;

4. if there is a candidate slating process, whether the members of the minority group have been denied access to that process;

5. the extent to which members of the minority group in the state or political subdivision bear the effects of discrimination in such areas as education, employment, and health which hinder their participation in the political process;

6. whether political campaigns have been characterized by overt or subtle racial appeals; and,

7. the extent to which members of the minority group have been elected to office in the jurisdiction.

S. Rep. 97-417, 97th Cong., 2d Sess. 28-29 (1982). In addition, the Senate Report listed two additional factors that may have some probative value as part of the evidence to establish a violation of Section 2:

> whether there is a significant lack of responsiveness on the part of elected officials to the particularized needs of the members of the minority group.
>
> whether the policy underlying the state or political subdivision's use of such voting qualification, prerequisite to voting or standard, practice or procedure is tenuous.

S. Rep. 97-417, 97th Cong., 2d Sess. 28-29 (1982). "If present, the[se] other factors . . . are supportive of, but *not essential to*, a minority voter's claim." *Thornburg* v. *Gingles*, *supra*, 478 U.S. at 48-49 n.15 (emphasis in original). There is no requirement that all, or any particular number of these factors be shown in order to prove a violation of Section 2. Rather, the court should "determine, based 'upon a searching practical evaluation of the 'past and present reality',' . . . whether the political process is equally open to minority voters." *Thornburg* v. *Gingles*, *supra*, 478 U.S. at 79.

267. A violation of Section 2 also is shown if the evidence demonstrates that the challenged election plan was adopted or has been maintained with a discriminatory purpose. *Garza* v. *County of Los Angeles*, 918 F.2d 763, 770 (9th Cir. 1990), *cert. denied*, 498 U.S. 1028 (1991); see *McMillan* v. *Escambia County*, 748 F.2d 1037, 1046-47 (5th Cir. 1984); *United States* v. *Marengo County Commission*, 731 F.2d 1546, 1553 (11th Cir.), *appeal dismissed*, *cert. denied*, 469 U.S. 976, (1984); *Dillard* v. *Baldwin County Board of Education*, 686 F. Supp. 1459, 1460, 1467-69 (M.D. Ala. 1988); S. Rep. No. 97-417, 97th Cong., 2d Sess. 27 (1982). Courts since *Thornburg* have continued to analyze intentional discrimination

claims independently of the "results" test. *Garza* v. *County of Los Angeles*, *supra*, 918 F.2d at 766; see also *Overton* v. *City of Austin*, 871 F.2d 529, 540-541 (5th Cir. 1989); *Carrollton Branch of NAACP* v. *Stallings*, 829 F.2d 1547, 1552-1553 (11th Cir. 1987), *cert. denied sub nom. Duncan* v. *City of Carrollton*, 485 U.S. 936 (1988); and *Brown* v. *Bd. of Comm'rs of City of Chattanooga*, 722 F. Supp. 380 (E.D. Tenn. 1989). Such proof of intentional discrimination also establishes a violation of the Fourteenth and Fifteenth Amendments. *Rogers* v. *Lodge*, *supra*, 458 U.S. at 618.

[Original document contains no ¶¶ 268-281.]

282. No redistricting plan can be designed and drawn for the Bossier Parish School Board with one or more black-majority districts without splitting and cutting precincts in violation of Louisiana Revised Statutes, Title 17, Section 71.3. Under Louisiana law, the Bossier Parish Police Jury is the governing authority for Bossier Parish and is vested with the authority and duty of redistricting after each ten year census. Under Louisiana law, the precinct lines it draws may not be cut, split or otherwise violated by the Bossier Parish School Board if the School Board is the same size as the Police Jury. This law is clearly set out in Louisiana Revised Statutes, Title 17, Section 71.3.

283. The majority opinion in *Shaw* v. *Reno*, —— U.S. ——, 125 L.Ed.2d 511 (1993), contends that racial gerrymandering separates the citizens on the basis of race. *Shaw* stands for the legal proposition that a redistricting plan which rationally cannot be understood as anything other than an effort to separate voters into different districts on the basis of race, without sufficient justification, is a violation of

the Equal Protection Clause of the Fourteenth Amendment to the Constitution of the United States.

284. Vote dilution is meaningful only with respect to a norm to be established; in order to decide whether an electoral system has made it harder for minority voters to elect candidates they prefer, a court must have an idea in mind of how hard it should be for minority voters to elect their preferred candidates under an acceptable system.

285. It is a fiction to conclude that only blacks can govern fairly other blacks.

Respectfully submitted,

DEVAL L. PATRICK
Assistant Attorney General

ERIC H. HOLDER, JR.
United States Attorney

/s/ Gaye L. Hume
ELIZABETH JOHNSON
REBECCA J. WERTZ
GAYE L. HUME
D.C. Bar No. 394539
STEVEN J. MULROY
NANCY J. SARDESON
Attorneys, Voting Section
Civil Rights Division
Department of Justice
P.O. Box 66128
Washington, D.C. 20035-6128
202-307-6302

Respectfully submitted,

/s/ Samuel L. Walters
SAMUEL L. WALTERS
D.C. Bar No. 405654
Lawyer's Committee For
Civil Rights Under Law
1450 G Street, N.W.,
Suite 400
Washington, D.C. 20005
(202) 662-8322

PATRICIA A. BRANNAN
D.C. Bar Number 332544
Hogan & Hartson, L.L.P.
555 Thirteenth Street, NW
Washington, D.C. 20004
(202) 637-8686

JOHN W. BORKOWSKI
Hogan & Hartson
546 Carondelet Street
Suite 207
New Orleans, LA 70130
(504) 593-0824
ATTORNEYS FOR
INTERVENING
DEFENDANTS

/s/ James J. Thornton
JAMES J. THORNTON, ESQ.
Attorney-at-Law
642 Stoner Avenue
Shreveport, Louisiana 71101
(318) 221-6294
FAX: (318) 221-4456

[Certificate of Service Omitted in Printing]

APPENDIX C

[DOJ Logo]

U.S. Department of Justice
Civil Rights Division
Washington, D.C. 20035

Office of the Assistant Attorney General

[Aug. 30, 1993]

Mr. W. T. Lewis
Superintendent of Bossier
Parish Schools
P.O. Box 2000
Benton, Louisiana 71006-2000

Dear Mr. Lewis:

This refers to the 1992 redistricting plan and the renaming of districts from letters to numbers for the Bossier Parish School District in Bossier Parish, Louisiana, submitted to the Attorney General pursuant to Section 5 of the Voting Rights Act of 1965, as amended, 42 U.S.C. 1973c. We received your response to our request for additional information on June 29, 1993.

The Attorney General does not interpose any objection to the renaming of the districts from letters to numbers. However, we note that Section 5 expressly provides that the failure of the Attorney General to object does not bar subsequent litigation to enjoin the enforcement of the change. See the Procedures for the Administration of Section 5 (28 C.F.R. 51.41).

We cannot reach the same conclusion with regard to the proposed redistricting plan. We have considered carefully the information you have provided, as

well as Census data and information and comments received from other interested parties. According to the 1990 Census, black residents comprise 20.1 percent of the total population in Bossier Parish. The Bossier Parish School District, which is coterminous with the parish, is governed by a twelve member school board elected from single-member districts. Under both the existing and proposed districting plans, not one of the twelve single-member districts is majority black in population. Currently, there are no black members on the school board.

In light of the pattern of racially polarized voting that appears to prevail in parish elections, the proposed plan, adopted by the parish police jury and recommended by the school board's consultant, would appear to provide no opportunity for black voters to elect a candidate of their choice to the school board. We note that under the proposed plan, the school board district with the highest black population percentage, District 4, is 45 percent black. The information provided in your submission indicates that prior to the adoption of the proposed redistricting plan, members of the black community appeared before the school board and requested that the board draw a redistricting plan that would fairly reflect black voting strength in the parish by creating two majority black districts.

We are mindful of the fact that we granted Section 5 preclearance to an identical redistricting plan for the Bossier Parish police jury in July 1991. However, in reviewing the submitted redistricting plan for the school board, we have taken into account new information, particularly the 1991 police jury elections held under the 1991 redistricting plan and the 1992 redistricting process for the school board. Dur-

ing that process, it appears that an alternative plan that would have provided for two districts which are approximately 62 and 56 percent black in total population was presented to the school board at a public hearing.

Our analysis of this alternative, preferred by members of the black community, shows that black residents are sufficiently numerous and geographically compact so as to constitute a majority in two single-member districts. Apparently, the school board rejected this plan and engaged in no efforts to accommodate the requests of the black community, instead adopting the redistricting plan adopted by the parish police jury. While the school board is not required by Section 5 to adopt any particular plan, it is not free to adopt a plan that unnecessarily limits the opportunity for minority voters to elect their candidates of choice.

We have considered the school board's explanation that the proposed plan was adopted in order to avoid voter confusion by having the same districting plans for both school board and police jury elections. In addition, the school board has indicated that the need to avoid split precincts, pursuant to state law, limited its ability to adopt a redistricting plan with majority black districts.

We do not find either of these arguments persuasive. We understand that during the 1980's the school board and police jury used different districting plans as a result of the reapportionment of their respective districts following the 1980 Census and no evidence has been presented to show that voter confusion resulted. And while we are aware that state law prohibits precinct splits in school board redistricting plans, we also note that state law allows

police juries to realign precincts and such a realignment in Bossier Parish could have facilitated the development of a school board redistricting plan with majority black districts. The information that you have provided discloses no evidence that the school board ever sought a precinct realignment that would have allowed the drawing of such a plan.

Under Section 5 of the Voting Rights Act, the submitting authority has the burden of showing that a submitted change has neither a discriminatory purpose nor a discriminatory effect. See *Georgia* v. *United States*, 411 U.S. 526 (1973); see also the Procedures for the Administration of Section 5 (28 C.F.R. 51.52). In addition, preclearance must be withheld where a change presents a clear violation of Section 2. 28 C.F.R. 51.55(b)(2). In light of the considerations discussed above, I cannot conclude, as I must under the Voting Rights Act, that the proposed redistricting plan meets the Act's preclearance requirements. Therefore, on behalf of the Attorney General, I must object to the 1992 school board redistricting plan.

We note that under Section 5 you have the right to seek a declaratory judgment from the United States District Court for the District of Columbia that the proposed change has neither the purpose nor will have the effect of denying or abridging the right to vote on account of race or color. In addition, you may request that the Attorney General reconsider the objection. However, until the objection is withdrawn or a judgment from the District of Columbia Court is obtained, the 1992 redistricting plan continues to be legally unenforceable. *Clark* v. *Roemer*, 111 S. Ct. 2096 (1991); 28 C.F.R. 51.10 and 51.45.

To enable this Department to meet its responsibility to enforce the Voting Rights Act, please inform us of the course of action the Bossier Parish School District plans to take with respect to this matter. If you have any questions, you should call Gaye Hume (202-307-6302), an attorney in the Voting Section.

Sincerely,

/s/ James P. Turner
JAMES P. TURNER
Acting Assistant Attorney General
Civil Rights Division

APPENDIX D

[DOJ Logo]

U.S. Department of Justice
Civil Rights Division
Washington, D.C. 20035

Office of the Assistant Attorney General

[December 20, 1993]

James M. Bullers, Esq.
District Attorney
26th Judicial District
Bossier-Webster Parishes
P. O. Box 69
Benton, Louisiana 71006

Dear Mr. Lewis:

This refers to your request that the Attorney General reconsider the August 30, 1993, objection under Section 5 of the Voting Rights Act of 1965, as amended, 42 U.S.C. 1973c, to the 1992 redistricting plan for the Bossier Parish School District in Bossier Parish, Louisiana. We received your request on September 7, 1993; supplemental information was received on October 20, 1993.

We have reconsidered our earlier determination in this matter based on the information and arguments the school board has advanced in support of the request. According to the 1990 Census, black persons comprise 20.1 percent of Bossier Parish's total population and 17.6 percent of its voting age population. The school board is elected from twelve single-member districts; none of the districts in the 1992 redistricting plan subject to our objection have a black majority. As explained in the August 30, 1993, objec-

tion letter, our analysis of your initial submission showed that, given the apparent pattern of racially polarized voting in parish elections, black voters will be unable to elect a candidate of their choice to the school board under the objected-to redistricting plan. Our review of the redistricting process further indicated that the school board made no effort to accommodate the request of the black community that the board develop a plan with two black-majority districts and gave no consideration to such a plan developed by the NAACP.

In support of its request for reconsideration, the school board continues to argue that it is impossible to draw a redistricting plan with black-majority districts without splitting precincts in violation of state law. We considered this argument during our prior review and found this explanation unpersuasive. Our objection letter specifically noted that the school board could have, but did not, seek a realignment of voting precincts by the Bossier Parish Police Jury that would have facilitated the development of a plan that fairly reflects black voting strength while addressing these state law concerns. The information made available to us indicates that the school board has not requested that the police jury make any necessary realignment of precincts.

In addition, your letter, citing *Shaw* v. *Reno*, 113 S. Ct. 2816 (1993), argues that the alternative plan developed by the NAACP is "so irrational on its face that the plan could be understood only as an effort to segregate voters into separate voting districts because of their race." However, the school board provides no basis in fact nor explanation for this assertion, and our analysis of the plan does not support your conclusion. Moreover, the school board does not appear to dispute the fact that black residents are sufficiently numerous and geographically compact in the parish so that two black-majority districts could be created. You contend only that it is not possible to do so given current precinct configurations, which the school board has not sought to alter. In these circumstances, *Shaw* v. *Reno* does not provide a legal basis for withdrawing our objection, and the school board's reliance upon that decision appears to be pretextual.

In light of the considerations discussed above, I remain unable to conclude that the Bossier Parish School District has carried its burden of showing the submitted change has neither a discriminatory purpose nor a discriminatory effect. See *Georgia* v. *United States*, 411 U.S. 526 (1973); see also the Procedures for the Administration of Section 5 (28 C.F.R. 51.52). Therefore, on behalf of the Attorney General, I must decline to withdraw the August 30, 1993, objection to the 1992 redistricting plan for the school board.

As we previously advised, the school board retains the right to seek a declaratory judgment from the United States District Court for the District of Columbia that the objected-to change has neither the purpose nor will have the effect of denying or abridging the right to vote on account of race or color. In addition, we remind you that unless and until a judgment from the District of Columbia Court is obtained, the objection remains in effect and the objected-to change continues to be legally unenforceable. *Clark* v. *Roemer*, 111 S. Ct. 2096 (1991); 28 C.F.R. 51.10 and 51.48(d).

To enable us to meet our responsibility to enforce the Voting Rights Act, please inform us of the action the Bossier Parish School District plans to take con-

cerning this matter. If you have any questions, you should call Gaye Hume (202-307-6302), an attorney in the Voting Section.

Sincerely,

/s/ James P. Turner
JAMES P. TURNER
Acting Assistant Attorney General
Civil Rights Division

APPENDIX E

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

Civil Action No. 94-1495
(LHS (USCA), CRR, GK)

BOSSIER PARISH SCHOOL BOARD,
PLAINTIFF

v.

JANET RENO, DEFENDANT

and

GEORGE PRICE, ET AL.,
DEFENDANT-INTERVENORS

NOTICE OF APPEAL

Notice is hereby given that, pursuant to 28 U.S.C. 1293 and 42 U.S.C. 1973c, defendant Janet Reno hereby appeals to the United States Supreme Court from the Order of the United States District Court for the District of Columbia (three-judge court) entered on November 2, 1995, granting preclearance under Section 5 of the Voting Rights Act of 1965, as amended, 42 U.S.C. 1973c, for the 1992 redistricting plan of plaintiff Bossier Parish School Board.

Respectfully submitted,

DEVAL L. PATRICK
Assistant Attorney General

ERIC H. HOLDER, JR.
United States Attorney

/s/ Gaye L. Hume
ELIZABETH JOHNSON
REBECCA J. WERTZ
GAYE L. HUME
D.C. Bar No. 394539
STEVEN J. MULROY
NANCY J. SARDESON
Attorneys, Voting Section
Civil Rights Division
Department of Justice
P.O. Box 66128
Washington, D.C. 20035-6128
202-307-6302

[Certificate of Service Omitted in Printing]

APPENDIX F

Section 2 of the Voting Rights Act of 1965, 42 U.S.C. 1973, provides:

> (a) No voting qualification or prerequisite to voting or standard, practice, or procedure shall be imposed or applied by any State or political subdivision in a manner which results in a denial or abridgement of the right of any citizen of the United States to vote on account of race or color, or in contravention of the guarantees set forth in section 1973b(f)(2) of this title, as provided in subsection (b) of this section.
>
> (b) A violation of subsection (a) of this section is established if, based on the totality of circumstances, it is shown that the political processes leading to nomination or election in the State or political subdivision are not equally open to participation by members of a class of citizens protected by subsection (a) of this section in that its members have less opportunity than other members of the electorate to participate in the political process and to elect representatives of their choice. The extent to which members of a protected class have been elected to office in the State or political subdivision is one circumstance which may be considered: *Provided*, That nothing in this section establishes a right to have members of a protected class elected in numbers equal to their proportion in the population.

Section 5 of the Voting Rights Act of 1965, 42 U.S.C. 1973c, provides:

> Whenever a State or political subdivision with respect to which the prohibitions set forth in sec-

tion 1973b(a) of this title based upon determinations made under the first sentence of section 1973b(b) of this title are in effect shall enact or seek to administer any voting qualification or prerequisite to voting, or standard, practice, or procedure with respect to voting different from that in force or effect on November 1, 1964, or whenever a State or political subdivision with respect to which the prohibitions set forth in section 1973b(a) of this title based upon determinations made under the second sentence of section 1973b(b) of this title are in effect shall enact or seek to administer any voting qualification or prerequisite to voting, or standard, practice, or procedure with respect to voting different from that in force or effect on November 1, 1968, or whenever a State or political subdivision with respect to which the prohibitions set forth in section 1973b(a) of this title based upon determinations made under the third sentence of section 1973b(b) of this title are in effect shall enact or seek to administer any voting qualification or prerequisite to voting, or standard, practice, or procedure with respect to voting different from that in force or effect on November 1, 1972, such State or subdivision may institute an action in the United States Disrtict Court for the District of Columbia for a declaratory judgment that such qualification, prerequisite, standard, practice, or procedure does not have the purpose and will not have the effect of denying or abridging the right to vote on account of race or color, or in contravention of the guarantees set forth in section 1973b(f)(2) of this title, and unless and until the court enters such judg-

ment no person shall be denied the right to vote for failure to comply with such qualification, prerequisite, standard, practice, or procedure: *Provided*, That such qualification, prerequisite, standard, practice, or procedure may be enforced without such proceeding if the qualification, prerequisite, standard, practice, or procedure has been submitted by the chief legal officer or other appropriate official of such State or subdivision to the Attorney General and the Attorney General has not interposed an objection within sixty days after such submission, or upon good cause shown, to facilitate an expedited approval within sixty days after such submission, the Attorney General has affirmatively indicated that such objection will not be made. Neither an affirmative indication by the Attorney General that no objection will be made, nor the Attorney General's failure to object, nor a declaratory judgment entered under this section shall bar a subsequent action to enjoin enforcement of such qualification, prerequisite, standard, practice, or procedure. In the event the Attorney General affirmatively indicates that no objection will be made within the sixty-day period following receipt of a submission, the Attorney General may reserve the right to reexamine the submission if additional information comes to his attention during the remainder of the sixty-day period which would otherwise require objection in accordance with this section. Any action under this section shall be heard and determined by a court of three judges in accordance with the provisions of section 2284 of title 28 and any appeal shall lie to the Supreme Court.

APPENDIX G

28 C.F.R. 51.55 (1995)

Consistency with constitutional and statutory requirements.

(a) *Consideration in general.* In making a determination the Attorney General will consider whether the change is free of discriminatory purpose and retrogressive effect in light of, and with particular attention being given to, the requirements of the 14th, 15th, and 24th amendments to the Constitution, 42 U.S.C. 1971(a) and (b), sections 2, 4(a), 4(f)(2), 4(f)(4), 201, 203(c), and 208 of the Act, and other constitutional and statutory provisions designed to safeguard the right to vote from denial or abridgement on account of race, color, or membership in a language minority group.

(b) *Section 2.* (1) Preclearance under section 5 of a voting change will not preclude any legal action under section 2 by the Attorney General if implementation of the change subsequently demonstrates that such action is appropriate.

(2) In those instances in which the Attorney General concludes that, as proposed, the submitted change is free of discriminatory purpose and retrogressive effect, but also concludes that a bar to implementation of the change is necessary to prevent a clear violation of amended section 2, the Attorney General shall withhold section 5 preclearance.

☆ U. S. GOVERNMENT PRINTING OFFICE: 1996 405017 40074

Supreme Court, U.S.
FILED
APR 8 1996
CLERK

Nos. 95-1455 & 95-1508

In The

Supreme Court of the United States

October Term, 1995

JANET RENO, ATTORNEY GENERAL OF THE UNITED STATES,

Appellant,

and

GEORGE PRICE, ET AL.,

Appellants,

v.

BOSSIER PARISH SCHOOL BOARD,

Appellee.

On Appeal From The United States District Court For The District Of Columbia

MOTION TO DISMISS OR AFFIRM

JAMES J. THORNTON, Counsel of Record
for Appellee Bossier Parish School Board
P. O. Box 4426 (71134-0426)
642 Stoner Ave. (71101)
Shreveport, Louisiana
Telephone (318) 221-6294
Fax (318) 221-4456

COCKLE LAW BRIEF PRINTING CO. (800) 225-6964
OR CALL COLLECT (402) 342-2831

35 pp

QUESTIONS PRESENTED

1. Whether the Trial Court was correct in holding that evidence of alleged violations of Section 2 of the Voting Rights Act cannot be used to deny preclearance under Section 5 of the Voting Rights Act.

2. Whether the Trial Court was correct in its findings of fact that the Bossier Parish School Board redistricting plan was adopted without discriminatory purposes.

3. Whether the Trial Court correctly precleared the Bossier Parish School Board redistricting plan.

TABLE OF CONTENTS

	Page
Questions Presented	i
Statement of the Case	1
Argument	3
I. Adoption of the Police Jury Plan Was Not Racially Motivated	3
II. The Conduct of the Justice Department	5
III. The Trial Court Was Correct in Holding That a Violation of Section 2 Should Not Be the Basis for Denying Preclearance Under Section 5	7
IV. The Trial Court Considered All Relevant Evidence in Determining Discriminatory Purpose Under Section 5 in This Case	11
V. Appellants' Redistricting Plan Is Neither Appropriate Nor Constitutional	18
VI. The Long Run Consequences	20
Conclusion	30

TABLE OF AUTHORITIES

	Page
CASES:	
Bossier Parish School Board v. Reno, 907 F. Supp. 434 (D.D.C. 1995)	14
Hays v. Louisiana, 839 F. Supp. 1188 (W.D. La. 1994)	20
Holder v. Hall, 114 S.Ct. 2581 (1994)	20
Miller v. Johnson, 115 S.Ct. 2475 (1995)	6, 19, 21
New York v. United States, 874 F. Supp. 394 (D.D.C. 1994)	13
Orr v. Orr, 440 U.S. 268 (1979)	27
Rev. Jesse Carroll Knight, Sr., et al. v. W. Fox McKeithen, Secretary of State, No. 94-848-A-2, (M.D. La. 1995)	18
Rome v. United States, 446 U.S. 156 (1980)	12
Shaw v. Reno, 113 S.Ct. 2816 (1993)	6
Thornburg v. Gingles, 478 U.S. 30 (1986)	20
Village of Arlington Heights v. Metropolitan Housing Dev. Corp., 429 U.S. 252 (1977)	11
CONSTITUTION AND STATUTES:	
United States Constitution Amend. XIV	11
Amend. XV	11
Voting Rights Act of 1965, 42 U.S.C. 1973 *et seq.* Sec. 2, 42 U.S.C. 1973	7, 10, 11, 12
Sec. 5, 42 U.S.C. 1973c	*passim*

TABLE OF AUTHORITIES – Continued

Page

Louisiana Rev. Stat., Title 17, Sec. 71.3E 4

Attorney General's Regulations, 28 C.F.R. Pt. 51, *et seq.* 8

APPELLEE'S MOTION FOR DISMISSAL OF APPELLANTS' APPEAL AND/OR AFFIRMATION OF THE JUDGMENT OF THE TRIAL COURT

Appellee respectfully requests that the Court deny the appeals of Appellants Janet Reno, Attorney General of the United States and George Price et al. from the judgment of the United States District Court for the District of Columbia. The Trial Court opinion is reported at 907 F.Supp. 434. (For the convenience of the Court, all citations to the Trial Court opinion will be to the opinion as reproduced in the Appendix attached to the Jurisdictional Statement filed by Appellant, Janet Reno, Attorney General of the United States.) Because the Jurisdictional Statements of both appellants are substantially the same and are based on the same set of facts, this response is directed at both appeals. In this response, we will identify the appeals by designation of the particular appellant.

STATEMENT OF THE CASE

This case should never have been litigated. That it is now posited in the United States Supreme Court emphasizes the wreckage that is so often wrought by the exercise of virtually unlimited authority coupled with an unbridled penchant for social engineering. It illustrates beyond peradventure the danger of zeal untempered by judgment, the quick fix without thought to long term, unsavory political consequences.

In 1991, the Bossier Parish Police Jury, the governing body of the parish, redistricted. The Jury consists of twelve members elected from single member districts. In 1991, eleven members were white, one black. The redistricting plan was unanimously approved by the Jury and

submitted to the Justice Department. After arranging for the relocation of several polling stations, the Justice Department blessed the effort and granted preclearance. (Trial Court Opinion at pp. 3a, 4a.)

Bossier Parish has a population of 86,088 of whom 20.1 per cent are black. Blacks comprise 17.6 per cent of the voting population and 15.5 per cent of the registered voters. Bossier City, the largest city in the parish, has a population of 52,721 of whom 17.95 per cent are black. The remaining black population is scattered throughout the parish in Benton, Plain Dealing, Princeton and Haughton.[1] (Trial Court Opinion at p. 2a.)

Because the concentrations of black residences are so scattered, the Police Jury's cartographer was unable to draw any black-majority districts that were contiguous and compact. (See Complainant's Exhibit No. 17 at pp. 2-6.) After the 1980 census, twelve districts with white majorities had been drawn. Nonetheless, Mr. Jerome Darby, a black, had won two terms, each time in runoffs against a white candidate. After preclearance of its new plan, Mr. Darby ran unopposed. (Trial Court Opinion at p. 2a.)

The Bossier Parish School Board began its redistricting in 1991. There was no emergency because the next school board elections were not scheduled until the fall of 1994. Mr. Gary Joiner, the cartographer who had assisted the Police Jury, was hired by the School Board. He set about his task by discussing with Board members their

---

[1] The Justice Department's Jurisdictional Statement states that black residences are concentrated in two areas. Not so. The Trial Court opinion at page 2a has the accurate picture.

preferences.[2] In September, 1991, Board member Thomas Myrick suggested that because the Police Jury and the School Board were the same size, the School Board should simply adopt the Jury plan. His suggestion, although not immediately acted on, planted a seed that matured a year later.

ARGUMENT

I. Adoption of the Police Jury Plan Was Not Racially Motivated

The Trial Court had no difficulty in divining the reasons the School Board adopted the Police Jury plan. The Trial Court found as fact that the motives were not discriminatory. (See Trial Court Opinion at 27a *et seq.*) Two paramount reasons were emphasized by the Court:

1. The Jury plan offered "guaranteed preclearance."

2. The Jury plan offered "easy implementation."

The Trial Court could have added that adopting the Jury plan was less expensive than fashioning a new plan, was a suitable compromise to competing appetencies advanced by the members, would terminate a matter that threatened to divert attention from educational considerations, and obeyed Louisiana electoral law in that it did not require the splitting of existing precincts.[3] In essence,

---

[2] Joiner testified that in addition to the usual concerns of incumbents, school board members identify with schools in their districts and try to hold on to them.

[3] The Trial Court had difficulty dealing with the Louisiana Statute that prohibited the splitting of any existing precincts whatever if the Police Jury and the School Board of a parish

the Trial Court found as fact that the School Board presented a *prima facie* case for preclearance. It did not believe that Appellants' rebuttals were sufficient to tip the balance in their favor. (Trial Court Opinion at p. 27a-30a.) The Trial Court rejected the allegations that the Board did not want a black member by pointing out that the Board during the period when it was considering a plan, appointed Mr. Jerome Blunt, a black, to fill a Board vacancy.

---

were the same size. See La. Rev. Stat., Title 17, Sec. 71.3E. No one ever alleged that this statute was unconstitutional; had it been so challenged, the Trial Court would have been obligated to invite the Louisiana Attorney General into the suit to defend the statute. The Louisiana prohibition against splitting precincts has no racial overtones. It is based merely on the happy assumption that when the Justice Department preclears a police jury plan on Monday, it will not repudiate its action on Friday. To be sure, some precincts are split with the permission of the Police Juries in matters of this kind, but we are chary of asserting that a Police Jury can violate state law at its whim. Perhaps, a federal court can give a plan splitting precincts its blessing and cure the violation (and again we doubt that a federal court can order violation of a state law without an allegation that the law is unconstitutional), but when the School Board was reviewing its options, its attorney and cartographer both told the Board that splitting precincts was not an option. (Tr. Vol. I. pp. 488, 49, 108, 109, 143, 148.) In any case, the Trial Court found that the NAACP plan advanced at the time split some forty-six precincts, a ridiculous and unprecedented number. But this is sophisticated and slightly convoluted legal reasoning, far beyond the province of the average Board member.

II. The Conduct of the Justice Department

From the beginning, Justice Department personnel along with intervenors were persuaded that Bossier Parish is a cesspool of racial bigotry, a bit of stereotyping that would be denounced with strident indignation if applied to any ethnic or racial minority.[4] This was the predisposition of the Justice Department before any evidence was taken; thereafter, they combed through the evidence in a frantic search for something, just anything, to sustain their predilections. In negotiations prior to this suit, the personnel were stern and unyielding. They made it abundantly clear that nothing less than two black-majority districts would support a preclearance; they also let it be known that they did not care how bizarre the districts appeared, how unsound demographically they were, or how many Louisiana statutes would be violated in the process. One black-majority district would not suffice.

Of course, political entities can always seek justice by filing for a declaratory judgment in the United States District Court in the District of Columbia. Except that few can. Many small entities cannot afford the luxury of resistance which Justice Department personnel warn them will be cost prohibitive. Most of these political entities are represented by district attorneys who are chronically overworked and understaffed, have no knowledge of the Voting Rights Act, have not the time to

---

[4] The most pernicious phrase tossed about by the Justice Department involves the right of blacks to elect candidates of their choice, as though it is inconceivable that a black should vote for a white or a white for a black, without regard to the experience of the candidate, his political agenda, and his political appeal.

study it, are largely skilled in criminal law only, and, in short, do not have the resources to counter the inexhaustible funds and live bodies the Justice Department can hurl against them.[5] They are less than thrilled at litigating in a strange court with unfamiliar rules. And, of course, before *Shaw v. Reno*, 113 S.Ct. 2816 (1993) and *Miller v. Johnson*, 115 S.Ct. 2475 (1995), there was every reason to believe that litigating the matter was the proverbial exercise in futility. Entity after entity in Louisiana collapsed, indignation turning to mush, under the pressures exerted by the relentless personnel of the Justice Department. The Bossier School Board alone in Louisiana dared the government and braved the costly litigation in the District of Columbia, not because its membership was racist, but because its cause was just. There is something to be said for sacrifice in pursuit of principle, old-fashioned and trite as it may sound. The determination of a free people to seek justice and to retain control of its electoral system, a precious democratic heritage, should not be confused with racism. It is shameful for Appellants to stereotype the Board members as racists because they are white;

---

[5] The Justice Department descended on Bossier Parish in platoon strength. They pored through every record the School Board had and demanded copies of things that were not even remotely relevant. They brought these records to court in a device not unlike the carts used by hotels to tote around baggage. They flew to Washington eight witnesses, three opinion witnesses and a cartographer. At times arrayed against the Board were upwards of a dozen attorneys and support personnel. Supplying what the Justice Department demanded was a full time job. Counsels for the Board felt they could not tax the School Board's resources beyond taking to Washington two board members, the cartographer and the school superintendent. If the United States operates at a fiscal deficit, no one has bothered to tell Justice Department personnel about.

were we to stereotype blacks or other ethnic minorities in the same manner, we would immediately be showered with charges of racism and discrimination. The sad fact is that despite recent Supreme Court and lower courts' opinions, political entities will probably still be bully-ragged and dragooned by the Voting Rights Section of the Justice Department who continue to insist, like Robespierre, that they have a monopoly on virtue.[6]

III. The Trial Court Was Correct in Holding that a Violation of Section 2 Should Not Be the Basis for Denying Preclearance under Section 5.

The Appellant Justice Department in its Jurisdictional Statement argues that alleged violations of Section 2 of the Voting Rights Act should be cause to deny preclearance to a jurisdiction under Section 5 of the Voting Rights Act.

---

[6] Lest we be misunderstood, we do not believe that the Voting Rights Act was a mistake. It was needed to correct abuses that had too long persisted. It certainly met the needs and circumstances of the day. We cannot say the same for the distortions of the Act for which the Justice Department is responsible. Even today, we would not dismantle the Act. We would amend it so that preclearances could also be granted by local three-judge federal courts, whose judges take the same oath of office as District of Columbia judges, and have been entrusted with integrating the school system, handling civil cases involving discrimination, handling Section 2 cases under the Voting Rights Act, and presumably have as much integrity and knowledge as federal judges in other parts of the country. It would make it less costly for political entities to seek justice and have their rights vindicated. Mr. Justice Holmes was quite correct when he spoke of rights without remedies. Justice should not depend on the weight of the pocket book.

The argument is threefold: 1) To hold otherwise seriously undermines the Justice Department's efforts to enforce Section 5; (Jurisdictional Statement of the Justice Department p. 13) 2) The legislative history shows that the Senate intended this to be the case; (Jurisdictional Statement of the Justice Department p. 4) and 3) The Attorney General's regulations to this effect (28 C.F.R. Pt. 51, *et seq.*) should be given great deference. (Jurisdictional Statement of the Justice Department p. 14.)

1) *Enforcement of Section 5.* As the Trial Court correctly holds, this Court's decision in *Miller v. Johnson, supra,* disposes of this claim. (Trial Court Opinion, at pp. 20a-24a.) The Trial Court states that the Supreme Court in *Miller* held that

> [T]he manner in which the Attorney General had employed Section 5 of the Voting Rights Act was 'insupportable', and that the Attorney General's incorrect interpretation of Section 5 could not be a compelling state interest sufficient to survive strict scrutiny. (Trial Court Opinion at p. 20a, citing *Miller* at 2492.)

The District Court further points out that the *Miller* Court "noted that the purpose of Section 5 is to avoid retrogression in the position of minority voters, and stated that the 'Justice Department's maximization policy seems quite far removed from this purpose.' " (Trial Court Opinion at p. 21a, citing *Miller* at 2493.)

When the Justice Department denied preclearance in this case they were operating under the same "maximization" policy as the policy repudiated by this Court in *Miller*. As the Trial Court held,

> [D]efendant's argument that the School Board's adoption of the Police Jury plan rather than

> something like the NAACP plan runs afoul of Section 5 is indistinguishable from an argument rejected by the Court in *Miller v. Johnson*. Here, defendant argues that the School Board has failed to provide an adequate reason explaining why it declined to act on a proposal featuring two majority-black districts. The Supreme Court described this position as "insupportable" and stated that Georgia's adherence to "other districting principles instead of creating as many majority-minority districts as possible does not support an inference that the plan 'so discriminates on the basis of race or color as to violate the constitution,' and thus cannot provide any basis under Section 5 for the Justice Department's objection." (Trial Court Opinion at pp. 24a-35a, citing *Miller* at 2492, citations omitted.)

The Trial Court correctly followed this Court's holding in *Miller* and held that

> The key to defendant's position in this case, similarly, is that the School Board has not provided an adequate explantion for adopting the precleared Police Jury plan when it had before it the NAACP plan. As *Miller* makes clear, the adoption of one nonretrogressive plan rather than another nonretrogressive plan that contains more majority-black districts cannot by itself give rise to the inference of discriminatory purpose. . . . The *Miller* Court rejected this theory of Section 5, and we will not resuscitate it here. (Trial Court Opinion at pp. 35a-36a.)

Appellant's argument that the District Court's holding should be overturned because it impedes Justice Department efforts to enforce their *erroneous* interpretation of Section 5, is unavailing.

2) *Legislative History*. As the District Court concluded "We hold, as has every court that has considered the question, that a political subdivision that does not violate either the 'effect' or the 'purpose' prong of Section 5 cannot be denied preclearance because of an alleged Section 2 violation." (Trial Court Opinion at pp. 11a-12a.) Given the serious federalism concerns invoked by Section 5's "extraordinary procedure" of requiring federal preclearance of states' redistricting legislation (Trial Court Opinion at p. 13a); the different functions of the two sections (Trial Court Opinion at pp. 14a-15a); the difference in the allocation of the burden of proof between the two sections (Trial Court Opinion at p. 16a); and the unambiguity of the statutes (Trial Court Opinion at p. 17a); the Court below "would not be pursuaded that what little legislative history defendant has discovered is sufficient to justify the radical expansion of already significant encroachment on the prerogatives of States and their subdivisions." (Trial Court Opinion at p. 17a.)

3) *Deference to Attorney General's Regulation*. In response to the deference argument, the Trial Court pointed out "Wherever else the Attorney General's interpretations of Section 5 of the Voting Rights Act may be entitled to deference, it certainly is not in this court. We will not defer to the Attorney General where, under the statute, an action seeking preclearance may be brought here in the first instance." (Trial Court Opinion at p. 18a citing cases at 18a-19a.)

IV. The Trial Court Considered All Relevant Evidence in Determining Discriminatory Purpose Under Section 5 in This Case

The Trial Court majority correctly held that the Bossier Parish School Board Plan was entitled to preclearance because the plan does not have a discriminatory "effect" and was not adopted with a discriminatory "purpose" but rather was adopted for legitimate, nondiscriminatory reasons.

Appellants argue that even even if a Section 2 violation is no basis for denying preclearance under Section 5, evidence of such an alleged violation (i.e., of factors set forth in *Village of Arlington Heights v. Metropolitan Housing Development Corp.*, 429 U.S. 252 [1977]) should nonetheless be considered by the District Court in making a determination under the "purpose" prong of Section 5.

As this Court is aware, *Arlington Heights* is not a Section 5 case. The case articulates a much-used standard for evaluating "discriminatory purpose" in constitutional and Section 2 cases. As the Trial Court recognizes, however, this is not the appropriate standard for the "extraordinary procedure" called for under Section 5. The Trial Court's opinion makes clear its analysis of Section 5 and the jurisprudence leads it to the conclusion that the "federalism costs" of Section 5 put it in a different category from constitutional challenges under the Fourteenth and Fifteenth Amendments and Section 2 challenges. The Trial Court held:

> [T]he statutory language sets forth differing standards for the two sections. The line cannot be blurred by allowing a defendant to do indirectly what it cannot do directly. The federalism costs already exacted by Section 5 are seriously

> increased if, under the guise of "purpose" evidence, alleged Section 2 violations must be countered by the political subdivision whenever it seeks preclearance. (Trial Court Opinion at 21a, n.10, 23a.)

Instead, the District Court correctly formulated and utilized the proper "purpose" analysis in a Section 5 proceeding. The Court held that the plaintiff (here the School Board) bears the burden of proving that it did not adopt the Police Jury plan with a discriminatory purpose. (Trial Court Opinion at 24a, citing *Rome v. United States*, 446 U.S. 156, 183 (1980).) The Court goes on to note that "[H]ow this plays itself out in litigation has been left largely unexplored. But a burden of proving non-discrimination on the plaintiff is anomalous under our law; the plaintiff is put in the position of proving a negative." (Trial Court Opinion at 25a.)

The District Court held that

> [O]nce the Board makes out its *prima facie* case, it is entitled to preclearance unless its *prima facie* case is rebutted. . . . If, however, the School Board's evidence is more persuasive than the evidence proffered against it, the School Board is entitled to preclearance. To make out a *prima facie* case for preclearance, the School Board must demonstrate that the proposed change will have no retrogressive effect, and that the change was undertaken without a discriminatory purpose. Proof of nondiscriminatory purpose must include "legitimate reasons" for settling on the given change. (Trial Court Opinion at pp. 26a-27a, cases omitted here.)

The District Court followed a co-equal panel in this analysis. (Trial Court Opinion at p. 27 a, n.14, citing *New York v. United States*, 874 F. Supp. 394, at 400 (D.D.C, 1994).)

Both the Justice Department and George Price, et al. claim that the evidence of discriminatory purpose presented at trial was probative of the School Board's discriminatory purpose. (Jurisdictional Statement of the Justice Department at p. 15 and Jurisdictional Statement of George Price, et al. at p. 2.)

Even though the Trial Court decided that much of this evidence was not relevant to a Section 5 action (Trial Court Opinion at p. 9a n.6), it may be helpful to elaborate for this Court on the nature of some of the evidence that the Appellants claim the Court below ignored.

The Justice Department and George Price, et al. claim that "The white Police Jurors and their demographer knew, just as the School Board knew during its subsequent redistricting process, that it was feasible to create two reasonably compact black-majority districts." (Jurisdictional Statement of the Justice Department at p. 8, citing Stipulations. 76a #36, 82a-83a #53, 114a #148 and Jurisdictional Statement of George Price, et al. at p. 5.) The referenced stipulations read as follows:

> **#36**: At the time of the 1990-91 redistricting process, some *Police Jurors* were specifically aware that a contiguous black-majority district could be drawn both in northern Bossier Parish and in Bossier City. At the time of the 1990-91 redistricting process, it was obvious that a reasonably compact black majority district could be drawn within Bossier City. "Contiguous" here means that all units of geography in the district have some common border with some adjacent unit." [emphasis added]

#53: At the April 25, 1991 Bossier Parish *Police Jury* meeting, Gary Joiner presented three plans to the *Police Jury*. These alternative plans drawn by Joiner were called Plan 5, Plan 8, and Plan 9. A number of members of the black community attended and asked about the creation of a black-majority district. Joiner stated that the wide distribution of blacks in the parish made a black-majority district "statistically impossible." At deposition, Joiner acknowedged that he knew at that time that drawing two black-majority districts within Bossier Parish was "statistically" possible, in that you could create two majority-black districts at a census block level with the correct population, ignoring precinct considerations. [emphasis added]

#148: The northern parish minority district in the Cooper Plan, District 8, is similar in shape and location to District 2 of the NAACP Plan, but is less elongated and more compact. The two are sufficiently similar so that the possibility of creating a district like the Cooper District 8 was readily discernible. However, Cooper District 8 is shorter and more compact.

Where in this "evidence" (which Appellants claim was "ignored" by the Court) is proof that a majority of the *School Board* members knew during their subsequent redistricting process that it was feasible to create two reasonably compact black districts? The evidence clearly shows that they were told by both the demographer and the District Attorney (the two persons upon whose opinons they would most likely and most reasonably rely) that in fact they could not draw the majority black districts in the NAACP plan without violating state law and without violating traditional districting principles. (Tr. Vol. I, pp. 48-49, 108-109, 143, 148.)

The Trial Court pointed out that Defendant and Intervenors below

> contend that the Police Jury plan itself was precleared by the Attorney General only because relevant information was withheld from the Attorney General. In order for this to be evidence that the School Board adopted the Police Jury plan with an impermissible purpose, the School Board would have to have known that such information had been withheld from the Attorney General, and that but for that withholding, the Attorney General would not have precleared the Police Jury plan. We know of no evidence even suggesting the School Board had any knowledge that the Police Jury plan had been precleared illegitimately if in fact it had been. (App. 28a-29a.)

The Trial Court did not *ignore* evidence "that the School Board knew during their subsequent redistricting process that it was feasible to create two reasonably compact black districts". There was no such evidence to be ignored.

As the Trial Court correctly recognized, the fact that the School Board originally did not like the Police Jury plan (because it pit incumbents against each other and did not include schools in every district), argues not for their willingness to subvert these concerns to their discriminatory purpose, but rather the importance they placed on the legitimate purposes, i.e., "guaranteed preclearance" and "easy implementation." (Trial Court Opinion at p. 28a.) As the Trial Court said,

> The Police Jury plan wreaked havoc with the incumbencies of four of the School Board members and was not drawn with school locations in

mind. When, however, the redistricting process began to cause agitation within the black community, and when it became obvious that any plan adopted by the School Board would give rise to controversy and division (and we find that by the time the NAACP's redistricting plan had been presented to the School Board, the Board could very reasonably foresee this), the Police Jury plan became, as Board member Myrick described it, 'expedient.' Any port will do in a storm, and when the clouds over the School Board's redistricting process began to grow ominous, the only close port was the already precleared Police Jury plan." (Trial Court Opinion at p. 28a.)

Appellants make much of statements made by three School Board members as evidence of discriminatory purpose. (Jurisdictional Statement of George Price, et al. at pp. 10-11 and Trial Court Opinion at p. 30a.) The Trial Court found this evidence unconvincing, as did the dissenting judge. (Trial Court Opinion at pp. 30a-32a and 32a n.17.) And this was, by their own assertion, the "best evidence of discriminatory purpose" put forward by counsel for Intervenors below. (Trial Court Opinion at p. 32a n.17.) The Trial Court majority found that this evidence constituted the "direct" evidence presented by Defendant and Intervenors [Appellants here] and consisted of the alleged statements of three School Board members. The Trial Court concluded that "none of these statements attributed to these Board members, if they were in fact made, show that the Board acted with discriminatory motivation." (Trial Court Opinion at p. 30a.) The dissenting judge found "These statements standing alone would certainly be insufficient to show discriminatory purpose." (Trial Court Opinion at p. 32a n.17.)

The majority in the Trial Court below then discusses the "indirect" evidence. The Court found that the evidence that "defendant relies most heavily upon is the 'sequence of events leading to the school board's adoption of the police jury plan.' " (Trial Court Opinion at p. 33a, citing Defendant's Brief at p.15.) The Trial Court says that "Defendant argues that these events raise an inference that the plan was adopted with a discriminatory purpose." (Trial Court Opinion at p. 33a.) The Court, however, rejects this argument, holding

> [W]e think that assuming that the quick rejection of the NAACP plan is probative of a discriminatory purpose requires at least that the Board have regarded the NAACP plan as a plausible plan. We have no evidence that the plan was, as an objective matter, plausible. . . . And, we have no indication that the School Board itself thought the plan plausible. The existence of the NAACP plan demonstrated to the Board that its efforts to redistrict would be subject to exacting review and vociferous criticism. The swift selection of the only plan around that bore the imprimatur of the Attorney General resembles not a brazen stroke in the name of racist redistricting but an understandable, if not necessarily laudable, retreat from a protracted and highly charged public battle. (Trial Court Opinion at pp. 33a-34a.)

Thus, as the Trial Court found, there is insufficient evidence in the record which is relevant to a Section 5 inquiry to rebut the School Board's *prima facie* case that it adopted the precleared Police Jury plan for legitimate, nondiscriminatory reasons and the judgment of the Trial Court should be affirmed.

V. Appellants' Redistricting Plan Is Neither Appropriate Nor Constitutional

Despite Appellants' assertion to the contrary, the redistricting plan they sponsored as an alternative is neither appropriate nor constitutional. It is not appropriate because it fashions two bizarre and outrageously gerrymandered black majority districts solely for racial considerations. We have already mentioned that the NAACP plan split some forty-six precincts. (Even Creel, their witness on splitting precincts, testified that the most he had seen split was eight.) The final Cooper plan split twenty-four precincts by Cooper's own account. (Tr., Vol. II at pp. 176-177.) In the District Court for the Middle District of Louisiana, the first plan devised by Appellants' cartographer, Mr. William Cooper, was put forward to the Court in a suit brought by certain black Bossier Parish residents as a proper alternative to the Bossier Plan.[7]

The final Cooper plan was a most unimpressive effort. Mr. Cooper obligingly told us that he prepared this plan to fashion two black-majority districts. He admitted to Judge Richey that his districts were not compact; when he was asked by the Court if compactness was important,

---

[7] This suit was entitled *Rev. Jesse Carroll Knight, Sr. et al. v. W. Fox McKeithen, Secretary of State*, No. 94-848-A-2, in the United States District Court for the Middle District of Louisiana, Judge John Y. Parker, presiding. Judge Parker characterized the Cooper plan as an octopus with tentacles in all directions. See copy of Judge Parker's comments into the record at the end of the trial in the *Knight* case which forms an exhibit in this case. (See Complainant's Exhibit No. 9.) Judge Parker refused to install Mr. Cooper's plan. The second Cooper plan advanced by Defendant/Intervenors in this case was the same plan as in *Knight* with very insignificant alterations.

he assured Judge Richey that compactness was of no real significance. That is news to us and appeared to be news to the Court as well. (See Tr., Vol. II at pp. 178 *et seq.*)

But if we read *Miller v. Johnson* correctly, the Cooper plan would also be unconstitutional. The majority opinion in the *Miller* case squarely held that Section 5 of the Act did not require maximization of black-majority districts, and, indeed, to fashion districts solely or substantially for racial purposes is a violation of the Equal Protection clause of the Fourteenth Amendment. See *Miller v. Johnson*, 115 S.Ct. at 2493. The *Miller* case made it crystal clear that the Voting Rights Act was intended to prevent retrogression and did not mandate a policy of maximization of black-majority districts so vigorously and uncompromisingly advanced by the Justice Department.

Were this court to invalidate the judgment of the Trial Court, the Bossier Parish School Board would be in a dilemma from which there is no escape. Left to the tender mercies of the Justice Department, it would no doubt be compelled to disobey Louisiana law and install the Cooper plan, the octopus with tentacles in all directions, as Judge Parker so wryly put it. If challenged by white voters, the Board would be compelled to testify that the gerrymandered districts were fashioned for racial reasons only, or perjure themselves and pretend that the bizarre districts were fashioned for reasons other than race. If the Board opted to tell the truth, the plan would clearly be a violation of the Equal Protection clause as *Miller v. Johnson* points out.

VI. The Long Run Consequences

Appellants' interpretations of the Voting Rights Act bear small resemblance to its purposes. To be sure, it was enacted to effect equality in the electoral process, to correct past abuses, to guarantee black voting registration and to promote it, and to put a stop to gerrymandering to dilute black voting strength. The task of administering the Act was entrusted to the Voting Rights Section of the Civil Rights Division of the Department of Justice. The personnel of that section set about their task with fervor and, at times, a vengeance. It was not long before white gerrymandering ceased and impediments to black registration, or even discourtesies in the process, triggered the intervention of federal enforcement agencies. Perhaps Justice Clarence Thomas put it best in *Holder v. Hall,* 114 S.Ct. 2581, 2612 (1994) when he chided the *Thornberg v. Gingles* Court for studiously ignoring the Dole Amendment of 1982: "We have stated time and again that a legislature says in a statute what it means and means in statutes what it says."

"Power corrupts and absolute power corrupts absolutely," commented Lord Acton. Lord Acton's dictum is nowhere more evident than when the Justice Department wields its enormous powers. The Voting Rights Section, burgeoned with young, exuberant social engineers, convinced that they possess a monopoly on virtue, determined to create in its subject territories its own brand of electoral justice. Justice Thomas in *Holder v. Hall,* 114 S.Ct. 2581, 2599 (1994) captured this attitude when he sharply scored the Justice Department personnel for imposing their will on political entities who want only "to avoid costly and disruptive Voting Rights Act litigation," all aided by some federal courts. The opinion of Judge Wiener in *Hays v. Louisiana,* 839 F.Supp. 1188, fn. 21 at

pp. 1196, 1197 (W.D. La. 1994) also was critical of the machinations of Justice Department personnel, as was the Trial Court in *Miller v. Johnson,* 864 F.Supp. 1354, 1362 *et seq.* (S.D. Ga. 1994), to name but a few. Under the draconian program of the government, the wheel of logic has come full circle: blacks are equal to whites, but in Orwellian fashion, some are more equal than others. Gerrymandering in favor of blacks and Hispanics became the standard for the social engineers, the modern day *literati.*

In a few decades American historians will applaud a few of the intentions of the Justice Department and lament the unsavory consequences of its follies, its penchant for quick fixes, its abuse of the immense power it was granted. The historians will wonder how the courts turned blind eyes to a deliberate defiance of the Dole Amendment which so clearly states: "Provided, nothing in this section establishes a right to have members of a protected class elected in numbers equal to their proportion in the population." (See 42 U.S.C., Sec. 1973, 2(6).)

This case, like *Miller v. Johnson, supra* (and countless others unlitigated and unknown to the courts and the public in general), illustrate beyond peradventure the scorn heaped on the Dole Amendment. The Justice Department demanded that the Bossier Parish School Board fashion two black-majority districts, not because proper demographic principles supported two, but because two safe black districts conformed roughly to the proportion of blacks to the population. This was the price for preclearance. In Georgia, the demand was for three black-majority districts because three was approximately the proportion of blacks to the state population. The redistricting plan that had two seats was not enough to please the *literati.* The black witnesses in this case all stated that they were entitled to two seats because two

conformed to their percentage of the population. If the Justice Department did not implant that notion, it certainly did nothing to disabuse its witnesses of it. The demand letters to the School Board from the Justice Department all specified two safe seats, never one.[8] (See Complainant's Exhibit No. 4.)

Historians may be unkind enough to point out that the scheme of emphasizing race, of pitting racial and ethnic groups against one another, of emphasizing differences rather than similarities, has promoted the very hostilities and distrust the Voting Rights Act was fashioned to remove. They might reflect that the creation of a new system of apartheid spelled an end to the American dream of unity, the Americanism that St. John Crevecoeur pridefully wrote about in the early years of our republic, of the pride we took in welcoming into our midst refugees from abroad and assimilating them into our society. The loss of this dream, a sense of national mission, cannot be quantified in a computer, but it is a heritage that makes our nation unique. It is not too much to say that we today are becoming a sharply divided nation stressing, as we do, the issue of race in matters such as affirmative action and electoral redistricting. If this Court

---

[8] We are aware that a few courts state that the Justice Department's demand for safe seats reflective of the minority population does not constitute proportional representation. We concede that it certainly is not a pristine copy of the system invented by the Belgian, M. Dhont. But the Dole Amendment does not proscribe proportional representation as an electoral system, it proscribes creating districts with a view to electing protected minorities in numbers proportionate to the population. We challenge anyone to distinguish what the Justice Department demanded in Bossier Parish from the proscription contained in the Dole Amendment.

believes that we are paranoid about this, we suggest that others whose dedication to civil rights has never been challenged are also deeply troubled.[9] A nation cannot as official policy treat races and ethnic groups differently without itself becoming disunited. As the Trial Court pointed out in fn. 12 at p. 24a of its opinion:

> At closing argument, defendant's counsel was presented with the question of whether a school board that affirmatively decides not to take race into account in any way could be found to have violated section 5. Counsel stated that a school board with the history and context of the Bossier Parish School Board which declined to take race into account would indeed violate section 5. This strikes us as double counting. The reason the Bossier Parish School board is subject to Section 5 at all is, at least in part, because of its history and context. Now that it is subject to Section 5, defendant would again cite the School board's history as a reason to saddle it with the additional burden of affirmatively taking race into account in order to prove that it did not have the proscribed purpose.

---

[9] See for example, Schlesinger, *The Disuniting of America*, Norton, 1991; Professor Lasch, *The Revolt of the Elites and the Betrayal of Democracy*, Norton, 1995; Sykes, *A Nation of Victims, The Decay of the American Character*, St. Martin Press, 1992; Hughes, *Culture of Complaint*, Warner Books, 1993; Sleeper, *The Closet of Strangers: Liberalism and the Politics of Race in New York*, 1990; and his excellent followup, "The End of the Rainbow," *New Republic*, November 1, 1993. These writers, and many other observers, concur in warning of recreating segregation by treating races differently.

The Court could have gone further. As the Justice Department fans conflict and hostility by arranging confrontation among the races and ethnic groups, and by its policies arranges for and even encourages bloc voting, it then uses the painful results of its misguided zeal as justification for its agenda to erase the very tragedies it has staged. The more apartheid crystalizes, the more the Justice Department can claim its program is indispensable to equality. And so on, *ad infinitum, ad nauseam*. It is a bureaucrāt's dream; a self-perpetuating program. It resembles a political commentary co-authored by George Orwell and Franz Kafka.

But what will distress future historians most is that this is one more example of the erosion of the right of plain, ordinary Americans to control their own destinies. Nothing is more precious to democracy than control of its electoral system; nothing erodes a democratic system more than the emergence of a clerisy, a modern day *literati* whose members believe with a certainty that is frightening that they are better and brighter than the rest of us, and that they, and only they, have the virtue and talents to qualify them to rig our election machinery to superintend who will be our Representatives in Congress and state legislatures, who will as judges preside over our system of justice, who will wield power as commissioners, councilmen, school board members and, indeed, the entire gambit of elected offices. Once again issues of substance have been wrested from the public realm and entrusted to an elite presumably to save us commoners from ourselves.[10]

---

[10] Lewis Lapham, longtime editor of *Harpers* has charted this movement in *The Wish for Kings*, Grove Press, New York, 1993. In a recent appellate court opinion which by some logical

And yet, the record of America's majority is not really so bad. If Americans were agonizingly backward in our early treatment of dark-skinned peoples (and also Irish, Chinese, Japanese, Jews and slavic immigrants), who in the world was so majestically tolerant and compassionate? The Belgian King, Leopold II, whose myrmidons inflicted unspeakable atrocities on the Congolese? Or the European imperialists who uniformly mistreated Africans and Asians in the name of religion and civilization. Or Bostonians who in 1835 paraded the abolitionist William Lloyd Garrison through the streets with a rope around his neck? Or the mob in 1837 that murdered the abolitionist Elijah Lovejoy in Alton, Illinois? Or the mob of "respectable" citizens of Utica, New York in 1835 including at least one judge, a Congressman and a clergyman who cracked skulls in a rout of a small group of abolitionists who, according to all contemporaneous accounts, were merely minding their own business?

In the "Gilded Age" of the American Industrial Revolution, the much maligned common man persisted in

---

tour de force found the right to die written in the Constitution, Judge Andrew Kleinfeld, in dissent noted: "The founding Fathers did not establish the United States as a democratic republic so that elected officials would decide trivia, while great questions would be decided by the judiciary." He might well have been restating Thomas Jefferson who wrote: "State a moral case to a ploughman and a professor, the former will decide it as well, and often better than the latter, because he has not been led astray by artificial rules." Reproduced at page 18 of Roberts and Stratton, *The New Color Line: How Quotas and Privilege Destroy Democracy*, Regnery Publishing, Inc., Washington D.C., 1995. It is embarrassing that most of the world's democracies exhibit a great deal more confidence in the people than do we.

electing state officials who recognized the need for reforms in the work place.

The majority concurred with Woodrow Wilson that Imperial Germany should not stand astride Europe in its jackboots and with Roosevelt, the charismatic patrician in a wheel chair and in his far-reaching reforms, despite the ferocious opposition of so many elites. Americans rejected both communism and fascism, unlike the Italians, Germans, Russians, Hungarians, Poles and the Yugoslavians, to name but a few.

The majority supported the war against fascism and showed extraordinary judgment and compassion in supporting policies that treated our conquered enemies with justice and dignity. The Marshall Plan, the most generous program in the history of the world, was supported whole-heartedly by a vast majority of the people.

And so on. History shows that when the majority seems slow to act, there is no shortage of elites to mount their offensives. As in keeping with Jefferson's belief, their record is not all that thrilling. It was the bureaucratic elite that supported a series of childish policies to assassinate Castro and mounted senseless interventions in Iran, Grenada, Guatamala, Nicaragua, Panama, Vietnam, and Chile, to name only a few. These were "covert" programs, covert for fear that Americans would learn of them and dismantle them. The targets of these policies always knew about them.

Do we waste the Court's time? Perhaps this Court is more interested in who testified to what, or the metrical embroideries the Justice Department employs in transmogrifying the Voting Rights Act into a convenient way to specify who our leaders will be. It is a heady power; small wonder that they fight to retain it. We respectfully

suggest that anyone who can reconcile himself to what the Justice Department is doing has misplaced his priorities. Nothing worse can befall us than to become a federation of races, a Balkan type republic where races and ethnic groups are taught hate and distrust, so tragically embodied among Muslims, Catholic Croatians, Orthodox Serbs, and Albanians. When hatred and distrust are institutionalized, as the Justice Department is on the road to doing, tolerance becomes ever so difficult to restore.[11]

We are not now and never will be free of prejudice. Loves and hatreds, however ugly, are prices we pay for democracy. Love and tolerance cannot be legislated. Resentment flourishes among a free people when an unelected elite herd them about like animals. The path toward unity is not legislation imposing a litany of dos and don'ts on a free people, but in education, social pressures, and programs that treat all people equally and fairly, and stress likenesses rather than differences. This approach has a much better chance of working. The gross anti-semitism of pre-World War II America has waned enormously without extraordinary legislation largely through education, social pressures, and the development of tolerance. In 1979 in *Orr v. Orr*, 440 U.S. 268, 99 S.Ct. 1102 (1979), this Court in a well reasoned decision decided that cosseting women had the unfortunate result of institutionalizing a belief in their inferiority. It argued that when we tell women they are inferior, we may soon become the architects of their inferiority. Today women in

---

[11] The damage already done will persist well into the next century unless this Court restores some balance to the Voting Rights Act. When the census of the year 2000 is finalized, the outrageous and racially gerrymandered districts will have to be retained because Section 5, as the Justice Department reads it, prohibits any retrogression.

law, engineering, medicine, and business testify to the wisdom of that decision. If indeed, people respond better to challenges, why should this widely accepted psychological concept not be equally beneficial to racial and ethnic minorities as well as to women?

The people of Bossier Parish are not the clerisy. It is easy to dismiss them as "bumpkins", "rubes", and "rednecks." Nor is the School Board extraordinary; it consists of housewives, former teachers, local businessmen, a banker and a retired Chief Probation officer in the United State Court system. None is an Ivy League graduate. They take pride in what they do. They are not racists, nor do they claim to be saints. They became stubborn because they deeply resent being patronized at best and denominated "racists" at worst.[12] They have difficulty accepting that they cannot be trusted to do justice. In the election of March, 1996 which took place after the Board was given preclearance, a black was elected outright, and three others will vie for Board seats in the runoff scheduled for April 20, 1996. One black in the runoff got 41% of the vote to his white opponent's 34%; the black may well win that seat. In another race the black and white candidates in the runoff each got 39% of the vote. In the third runoff, the black lagged well behind the white. The outcome, however, may well place as many as three blacks on the Board. See Motion to Supplement the Record filed by Appellee. This election certainly offsets the gloomy testimony of Dr. Richard Engstrom who saw no way for

---

[12] It is unfortunate that the designation of "racist" is no more meaningful in most instances than "communist" in the McCarthy era. Calling a person "racist" who does not agree one hundred per cent with one's agenda, is a ploy to place the target on the defensive and extract something from the leverage created.

blacks to be elected under the Board plan. Dr. Engstrom testified that in Bossier Parish there is a degree (unspecified) of racial bloc voting. Because there is a degree of racial bloc voting everywhere (as well as religious bloc voting, gender bloc voting, etc.) the Court appeared to believe that Dr. Engstrom had advanced mankind's knowledge very little. We concur.

The black who won outright ran against another black. He is Julien Darby, brother to Jerome Darby who twice in the 1980s won contested seats on the Police Jury in a white majority district and won an unopposed race in his new white-majority district created after the census. It is illuminating to read the direct testimony of the local NAACP President, Mr. George Price. In commenting on Jerome Darby's political success in three consecutive races, Price comes very near characterizing Jerome Darby as an "Uncle Tom" *because he has not made race an issue.* Never has it occurred to Mr. Price and the Justice Department that perhaps Bossier voters may well be tired of the racial issue and wish to dwell on ideas and performance.

When speaking of the elite bureaucrats in the Justice Department, some historian may recognize a parallel to the oft-quoted comment of Tacitus, defender of republicanism: "they have made a wilderness and called it peace." It is time to correct the imbalance, to give effect to the Equal Protection Clause, and to cease arranging racial confrontations. It would not be a travesty to deliver back to the people control of their electoral systems and the larger measure of democracy that would result. Perhaps this Court might say to the Justice Department what

Cromwell told Parliament: "You have sat too long for the good you have done. . . . In the name of God, go!"

CONCLUSION

For the reasons set forth above, the decision of the Trial Court should be affirmed.

Respectfully submitted,

JAMES J. THORNTON
Counsel of Record
for Appellee Bossier
Parish School Board
P.O. Box 4426 (71134-0426)
642 Stoner Ave. (71101)
Shreveport, Louisiana
Telephone (318) 221-6294
Fax (318) 221-4456

Supreme Court, U.S.
FILED
MAY 7 1996
CLERK

(4)

No. 95-1455

In the Supreme Court of the United States

OCTOBER TERM, 1995

JANET RENO, ATTORNEY GENERAL OF THE UNITED STATES, APPELLANT

v.

BOSSIER PARISH SCHOOL BOARD

ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF COLUMBIA

APPELLANT'S BRIEF IN OPPOSITION TO MOTION TO DISMISS OR AFFIRM

DREW S. DAYS, III
Solicitor General
Department of Justice
Washington, D.C. 20530
(202) 514-2217

TABLE OF AUTHORITIES

Cases: Page

Knight v. *McKeithen*, C.A. No. 94-848-A2 (M.D. La.) 5
Miller v. *Johnson*, 115 S. Ct. 2475 (1995) 3, 6
Thornburg v. *Gingles*, 478 U.S. 30 (1986) 4, 6
Village of Arlington Heights v. *Metropolitan Housing Dev. Corp.*, 429 U.S. 252 (1977) 2

Statutes:

Voting Rights Act of 1965, 42 U.S.C. 1973 *et seq.*:
§ 2, 42 U.S.C. 1973 ..... 1, 2, 3, 4, 6
§ 2(b), 42 U.S.C. 1973(b) 4
§ 5, 42 U.S.C. 1973c 1, 2, 3, 5

In the Supreme Court of the United States

OCTOBER TERM, 1995

No. 95-1455

JANET RENO, ATTORNEY GENERAL OF THE UNITED STATES, APPELLANT

v.

BOSSIER PARISH SCHOOL BOARD

ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF COLUMBIA

APPELLANT'S BRIEF IN OPPOSITION TO MOTION TO DISMISS OR AFFIRM

Appellee's Motion to Dismiss or Affirm underscores the appropriateness of review in this case, which raises important issues regarding (1) the correct standards for considering and assessing proof of discriminatory purpose under Section 5 of the Voting Rights Act of 1965, 42 U.S.C. 1973c, and (2) whether voting changes that clearly violate Section 2 of the Act, 42 U.S.C. 1973, are entitled to preclearance under Section 5.

1. Appellee acknowledges that the district court did not apply the established standard for evaluating

whether a governmental decision was motivated by a discriminatory purpose. Mot. to Aff. 11. Appellee contends that, although *Village of Arlington Heights* v. *Metropolitan Housing Dev. Corp.*, 429 U.S. 252, 266 (1977), articulates the standard for assessing discriminatory purpose under the Constitution and Section 2, that standard "is not the appropriate standard for the 'extraordinary procedure' called for under Section 5." Mot. to Aff. 11. Neither appellee's assertion nor the district court's purpose analysis is consistent with this Court's decisions. The decision below also squarely conflicts with several other three-judge court decisions applying *Arlington Heights* to evaluate discriminatory purpose under Section 5. See J.S. 15 n.12.

Appellee contends (Mot. to Aff. 13-15) that there was no evidence that the School Board members knew, when they adopted the Police Jury plan, that it was feasible to create two reasonably compact majority-black districts. The stipulations it quotes, however, state that "*it was obvious* that a reasonably compact black majority district could be drawn within Bossier City," *id.* at 13 (quoting J.S. App. 76a (¶ 36)), and that the possibility of creating a second such district in the northern area of Bossier Parish was "*readily discernible*," Mot. to Aff. 14 (quoting J.S. App. 114a (¶ 148)) (emphases added). Given the undisputed evidence of racially polarized voting in Bossier Parish, J.S. App. 40a, 122a-127a (¶¶ 181-196), the quoted stipulations show that the Board must have been aware of the dilutive effect of the Police Jury plan on minority voting strength when the Board undertook its own redistricting in 1991. Had the district court considered all the relevant evidence, as it should have, and applied the correct

legal standard, it would have found a prohibited racially discriminatory purpose. The district court's decision must therefore be reversed. See J.S. 13, 14-22.[1]

2. Appellee's principal response to our contention that the Court should review the question whether Section 5 preclearance may properly be denied if the proposed voting change clearly violates Section 2 is to allege that the Justice Department denied preclearance based, not on a clear Section 2 violation, but on an impermissible "maximization policy" in violation of this Court's holding in *Miller* v. *Johnson*, 115 S. Ct. 2475 (1995). Mot. to Aff. 8-9, 21. There is no basis, however—and appellee supplies none—for the contention that the Justice Department followed a "maximization" policy in denying the School Board's preclearance or in arguing against preclearance by the court in this case. The Justice Department's preclearance objection letter stated that "the school board is not required by Section 5 to adopt any particular plan," but must avoid "unnecessarily limit[ing] the opportunity for minority voters to elect their candidates of choice." J.S. App. 156a. The grounds for the objection included the fact that, in a context of racially polarized voting, and in the absence of any legitimate, nondiscriminatory justification, the proposed redistricting plan "would appear to provide *no* opportunity for black voters to elect a candidate of their choice to the school board." *Id.* at 155a (emphasis added). Similarly, in this litigation

---

[1] Appellee does not address our contention (J.S. 17) that the district court erred as a matter of law in refusing to consider the Board's substantial history of discrimination against blacks.

the Department objected, not to appellee's failure to adopt two majority-black districts, but to its adoption of a plan including none.[2]

Appellee also suggests that any majority-black district would not adhere to traditional districting principles. Mot. to Aff. 2, 18-19. That suggestion is incorrect. For example, appellee contends that, outside Bossier City, "the * * * black population is scattered throughout the parish." Mot. to Aff. 2 & n.1. The parties stipulated, however, and the district court found, that, in addition to its concentration in Bossier City, "[t]he black population is also concentrated in Benton, Plain Dealing, Haughton, and in the unincorporated community of Princeton." J.S. App. 2a; see *id.* at 68a (¶ 10). Those four communities are located in the northern rural part of the parish, which

[2] Appellee repeatedly asserts, with no supporting evidence whatsoever, that Justice Department officials demonstrated improper and divisive racial attitudes during the preclearance process. See, *e.g.*, Mot. to Aff. 5, 20, 22, 24, 28-29. The only example appellee supplies—which it describes as "[t]he most pernicious phrase tossed about by the Justice Department"—was the Department's desire to protect "the right of blacks to elect candidates of their choice." *Id.* at 5 n.4. That phrase directly tracks the text of Section 2(b) of the Voting Rights Act, 42 U.S.C. 1973(b) (ensuring the ability of members of protected classes "to participate in the political process and to elect representatives of their choice"); see also *Thornburg* v. *Gingles*, 478 U.S. 30, 80 (1986) (finding Section 2 violation in the impairment of "the ability of geographically insular and politically cohesive groups of black voters * * * to elect candidates of their choice"). The phrase refers to the right of minority voters to participate meaningfully in the political process despite the fact that they and their candidates of choice have been victims of racially discriminatory voting practices, including vote dilution caused in part by white racial bloc voting.

is not densely populated. The general population dispersion in the northern part of the parish does not, however, mean that the black population there is not sufficiently concentrated relative to the area's overall population to permit the creation of a compact majority-black district in that area.

Appellee contends that, "[b]ecause the concentrations of black residences are so scattered, the Police Jury's cartographer was unable to draw any black-majority districts that were contiguous and compact." Mot. to Aff. 2. The parties stipulated, however, that it was feasible to create two reasonably compact majority-black districts in the parish. J.S. App. 76a (¶ 36), 82a-83a (¶ 53).[3] Appellee's cartographer admitted, moreover, that he "knew at that time [of redistricting] that drawing two black-

[3] Appellee refers (Mot. to Aff. 18 n.7, 19) to statements regarding compactness by one of the three judges presiding in *Knight* v. *McKeithen*, C.A. No. 94-848-A2 (M.D. La.). Those statements were dicta. *McKeithen* was an action by black voters seeking declaratory and injunctive relief to prevent implementation prior to preclearance of redistricting plans in several Louisiana parishes, including the plan for the Bossier Parish School Board. Plaintiffs in *McKeithen* proposed an alternative interim redistricting plan for Board elections similar but not identical to the Cooper plan in this case. The *McKeithen* court made no compactness holding and declined to adopt any interim plan. The compactness issue was never resolved because that case was dismissed with the parties' consent following the district court's decision in this case.

Contrary to appellee's contentions (Mot. to Aff. 18-19), William Cooper did not "admit[] to Judge Richey that his districts were not compact," nor did he "assure[] Judge Richey that compactness was of no real significance." He testified that, although compactness is difficult to define, he seeks to draw districts that are "as square and neatly bounded" as possible. II Tr. 178-179.

majority districts within Bossier Parish was 'statistically' possible, in that you could create two majority-black districts at a census block level with the correct population." *Id.* at 82a-83a (¶ 53). Although the cartographer stated that, in order to do so, one must "ignor[e] precinct considerations," *ibid.*, the Police Jury had authority to split precincts in redistricting, *id.* at 69a, 76a-77a, 82a, 84a (¶¶ 13, 38, 52, 57), the Police Jury itself did not adopt a plan with the minimum number of precinct splits, *id.* at 88a-89a (¶ 70), and the School Board itself "likely anticipated the necessity of splitting some precincts" during its own redistricting effort, *id.* at 29a, 95a (¶ 89). See also J.S. 22. Given all the circumstances, appellee's failure to create any majority-black districts for School Board elections constituted a clear violation of Section 2.[4]

---

[4] Appellee suggests that its failure to adopt a plan with any majority-black districts was excusable because adopting a less dilutive plan would amount to "fashion[ing] districts solely or substantially for racial purposes" in violation of equal protection. Mot. to Aff. 19. It plainly was possible in this case, however, to draw one or two majority-black districts without "subordinat[ing] traditional race-neutral districting principles." *Miller*, 115 S. Ct. at 2488. The failure to adopt even a single majority-black district constituted a clear violation of Section 2 under *Thornburg* v. *Gingles*, 478 U.S. 30 (1986).

* * * * *

For the reasons stated in our jurisdictional statement and herein, the Court should note probable jurisdiction.

Respectfully submitted.

DREW S. DAYS, III
Solicitor General

MAY 1996

Supreme Court, U.S.
FILED
AUG 1 1996
CLERK

(1) (6)

Nos. 95-1455 and 95-1503

In the Supreme Court of the United States

OCTOBER TERM, 1995

JANET RENO, ATTORNEY GENERAL
OF THE UNITED STATES, APPELLANT

v.

BOSSIER PARISH SCHOOL BOARD

GEORGE PRICE, ET AL., APPELLANTS

v.

BOSSIER PARISH SCHOOL BOARD

ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF COLUMBIA

JOINT APPENDIX

WALTER DELLINGER
Acting Solicitor General
Department of Justice
Washington, D.C. 20530
(202) 514-1004

WALTER A. SMITH, JR.
PATRICIA A. BRANNEN
JOHN BORKOWSKI
Hogan & Hartson, L.L.P.
555 Thirteenth St., N.W.
Washington, D.C. 20004
(202) 637-8686

MICHAEL A. CARVIN
Shaw, Pittman, Potts & Trowbridge
2300 N. St., N.W.
Washington, D.C. 20037
(202) 663-8346

JAMES J. THORNTON
P.O. Box 4426 (71134-0426)
642 Stoner Ave. (71101)
Shreveport, La.
(318) 221-6294
Counsel for Appellee

(see inside cover for additional counsel)

Notice of Appeal Filed December 27, 1995
Probable Jurisdiction Noted June 3, 1996

300 pp
5 $10

BARBARA R. ARNWINE
THOMAS J. HENDERSON
BRENDA WRIGHT
SAMUEL L. WALTERS
Lawyers' Committee For Civil Rights Under Law
1450 G Street, N.W., Suite 400
Washington, D.C. 20005
(202) 662-8322

Counsel for Appellants

TABLE OF CONTENTS

Note: **Page**

The following (entries A-G) were reproduced in the Appendix to the Jurisdictional Statement of Appellant Janet Reno and thus do not appear in the Joint Appendix:

A. District court opinion ..... J.S. App. 1a

B. Joint Stipulations ..... J.S. App. 66a

C. Attorney General's objection letter dated Aug. 30, 1993 ..... J.S. App. 154a

D. Attorney General's letter denying reconsideration dated Dec. 20, 1993 ..... J.S. App. 159a

E. Notice of Appeal ..... J.S. App. 163a

F. Voting Rights Act of 1965, §§ 2, 5, 42 U.S.C. 1973, 1973c ..... J.S. App. 165a

G. 28 C.F.R. 51.55 ..... J.S. App. 168a

I. District court docket entries 1

II. Plaintiff's Trial Exhibits

A. Letter from U.S. Department of Justice to Bossier Parish Police Jury dated May 31, 1990 preclearing 1989 realignment of voting precincts (Exhibit 3) 26

B. Letter from U.S. Department of Justice to Bossier Parish Police Jury dated July 29, 1991 preclearing 1991 redistricting plan (Exhibit 3) 27

Page

C. Extract of Minutes of Bossier Parish Police Jury meeting on January 11, 1994 (Exhibit 5) 28

D. Court's Findings of Fact and Conclusions of Law in *Knight* v. *McKeithen*, C.A. No. 94-848-A2 (M.D. La. Aug. 23, 1994) (Exhibit 9) 29

E. Excerpts from Direct Testimony of Gary Dillard Joiner (Exhibit 17) 41

Note:

The following Plaintiff's Trial Exhibits (entries E-H) could not be reproduced legibly in the Joint Appendix and will be lodged separately with the Court:

E. Maps and charts for Cooper Plan No. 1 (submitted at trial in *Knight* v. *McKeithen*, C.A. No. 94-848-A2 (M.D. La.) on Aug. 19, 1994 (Exhibit 7)

F. Maps and chart detailing population and racial characteristics for Precinct Cuts in the Cooper 2 Plan (Exhibit 10)

G. Maps and chart detailing population and racial characteristics for Precinct Cuts in the NAACP Plan (Exhibit 11)

H. Color maps prepared by Gary Joiner showing black population concentrations (Exhibit 13) for:

1. Bossier Parish coded by Non-Hispanic Black population
2. Bossier City coded by Non-Hispanic Black populatio
3. Bossier City detail coded by Non-Hispanic Black population

Page

4. Plain Dealing to Benton corridor coded by Non-Hispanic Black population
5. Town of Plain Dealing and surrounding area coded by Non-Hispanic Black population
6. Town of Benton and surrounding area coded by Non-Hispanic Black population
7. Town of Haughton and surrounding area coded by Non-Hispanic Black population

III. United States Government Trial Exhibits

A. Map of districts in Current School Board Plan (1982)—whole Parish (Exhibit 75A) 42

B. Map of districts in Current School Board Plan (1982)—zoom-in on Bossier City area (Exhibit 75B) 43

C. Chart of 1990 demographic data for Current School Board Plan (1982) (Exhibit 75C) 44

D. Map of districts in Proposed School Board Plan (1992)—whole Parish (Exhibit 76A) 45

E. Map of districts in Proposed School Board Plan (1991)—zoom-in on Bossier City area (Exhibit 76B) 46

F. Chart of 1990 demographic data for Proposed School Board Plan (1991) (Exhibit 76C) 47

G. Map of districts in NAACP Plan—whole Parish (Exhibit 77A) 48

H. Map of districts in NAACP Plan—zoom-in on Bossier City area (Exhibit 77B) 49

I. Chart of 1990 demographic data for NAACP Plan (Exhibit 77C) 50

Page

J. Map of districts in Coooper Plan (Cooper 2)—whole Parish (Exhibit 78A) 51

K. Map of districts in Cooper Plan (Cooper 2)—zoom-in on Bossier City area (Exhibit 78B) 52

L. Chart of 1990 demographic data for Cooper Plan (Cooper 2) (Exhibit 78C) 53

M. Chart of elections featuring black candidates 1979-1993 (Exhibit 82) 54

N. Chronology and timeline of Bossier Parish Redistricting (Exhibit 85) 61

O. Excerpts from designations of portions of deposition of School Board Member Susan J. Barrera, Sep. 30, 1994 (Exhibit 86) 68

P. Excerpts from designations of portions of deposition of School Board Member Barbara Blaylock, Oct. 6, 1994 (Exhibit 87) 69

Q. Excerpts from designations of portions of deposition of School Board Member Henry Burns, Oct. 6, 1994 (Exhibit 90) 70

R. Excerpts of designations of portions of deposition of School Board Member Barbara Gray, Sept. 19, 1994 (Exhibit 93) 71

S. Excerpts of designations of portions of deposition of School Board Member Juanita Jackson, Sept. 29, 1994 (Exhibit 95) 73

T. Excerpts from designations of portions of deposition of School Board Member David L. Harvey, Sept. 30, 1994 (Exhibit 97) 74

U. Excerpts from designations of portions of deposition of School Board Member Boyce Hensley, Sept. 30, 1994 (Exhibit 98) 76

Page

V. Excerpts from designations of portions of deposition of School Board Member Marguerite Hudson, Sept. 29, 1994 (Exhibit 99) 77

W. Excerpts from designations of portions of deposition of School Board Member Michelle Rodgers, Sept. 30, 1994 (Exhibit 100) 81

X. Excerpts from designations of portions of deposition of School Board Member Ruth Sullivan, Sept. 29, 1994: 83-12 through 83-25 . 83

Y. Excerpts from designations of portions of deposition of Bossier Parish Registrar of Voters William Johnston, Oct. 12, 1994 (Exhibit 96) 84

Z. Excerpts from direct testimony of former School Board Member Jerome Blunt (Exhibit 102) 86

AA. Excerpts from direct testimony of S. P. Davis (Exhibit 106) 90

BB. Declaration of Dr. George Castille (without attachments) (Exhibit 103) 94

CC. Declaration of Dr. Richard L. Engstrom (without attachment) (Exhibit 107) 111

IV. Defendant-Intervenors' Trial Exhibits

A. Excerpts from final direct testimony of Defendant-Intervenor George Price (Exhibit B) 122

B. Excerpts from supplemental testimony of George Price (Exhibit B) 123

C. Letter from George Price to the Superintendent of the Bossier Parish Schools, Mar. 25, 1992 (Exhibit 4) 124

Page

D. Letter from George Price to the School Board, Aug. 17, 1992 (Exhibit 5) 126

E. Letter to School Board from six groups (NAACP, Men's Club of Bossier, Concerned Citizens, Voters League, Concerned Parents of Plain Dealing, and Bossier Housing Tenant Coalition), Sept. 18, 1992 (Exhibit 9) 128

F. Memorandum from the NAACP Redistricting Project to George Price, Sept. 24, 1992 (Exhibit 10) 130

G. Excerpts from Final Direct Testimony of defendant-intervenor Thelma Harry (Exhibit E) 133

H. Excerpts from Supplemental Testimony of Thelma Harry (Exhibit E) 135

I. Final Direct Testimony of David Creed (Exhibit F) 136

J. Supplemental testimony of David Creed (Exhibit F) 140

V. Excerpts from Trial Transcript—Volume I (April 10, 1995):

A. Testimony of plaintiff's witness Barry Musgrove—cross examination by the defendants 144

B. Testimony of plaintiff's witness Thomas D. Myrick—cross examination by the defendants 150

C. Testimony of plaintiff's witness Gary Joiner—cross examination by the defendants 158

Page

VI. Excerpts from Trial Transcript—Volume II (April 11, 1995):

A. Testimony of plaintiff's witness William T. Lewis—cross examination by the defendants 176

B. Testimony of Plaintiff's witness William T. Lewis—redirect examination by the plaintiff 182

C. Testimony of United States witness Jerome Darby—cross examination by the plaintiff 187

D. Testimony of United States witness Jerome Darby—redirect examination by the United States 201

E. Testimony of United States witness Jerome Darby—recross by the plaintiff 206

F. Testimony of United States witness Jerome Darby—further redirect by the United States 209

G. Testimony of defendant-intervenors' witness Jerry Hawkins—cross examination by the plaintiff 210

H. Testimony of defendant-intervenors' witness George Price—cross examination by the plaintiff 212

I. Testimony of defendant-intervenors' witness George Price—redirect examination by the defendant-intervenors 234

J. Testimony of defendant-intervenors' witness David Creed—cross examination by the plaintiff 235

Page

K. Testimony of United States' witness Jerome Blunt—cross examination by the plaintiff 241

L. Testimony of defendant-intervenors' witness Thelma Harry—cross examination by plaintiff 245

M. Testimony of United States' witness Johnny Gipson—cross examination by the plaintiff 246

N. Testimony of United States' witness Jeffrey Dewayne Darby—cross examination by the plaintiff 247

O. Testimony of United States' witness Dr. Richard L. Engstrom—cross examination by the plaintiff 250

P. Testimony of United States' witness Dr. Richard L. Engstrom—redirect examination by the United States 259

Q. Testimony of defendant-intervenors' witness William S. Cooper—cross examination by the plaintiff 260

VI. Louisiana Statutory Provisions from West's Louisiana Statutes Annotated (1995):

A. La. R.S. 17:52.A (election of parish school board members) 262

B. La. R.S. 17:71.3-17.71.7 (parish school board procedure for accomplishing reapportionment; special election districts; effective date of same) 263

Page

C. La. R.S. 18:425.1 (consolidation of polling places; reduction of number of voting machines and election officials) 268

D. La. R.S. 18:532 (establishment of precincts) 269

E. La. R.S. 8:532.1 (changing precinct boundaries) 272

F. La. R.S . 18:1400.1 (election costs paid by secretary of state; governing authorities; reimbursement) 279

G. La. R.S. 18:1400.2 (election costs paid by commissioners of elections; governing authorities; reimbursement) 281

H. La. R.S. 18:1400.3 (election expenses incurred by clerks of court and registrars of voters; payment by commissioner of elections; payment by governing authorities) 283

VII. Orders Noting Probable Jurisdiction 288

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

Civil Docket for Case #:
94-CV-1495

BOSSIER PARISH SCHOOL BOARD, PLAINTIFF

v.

JANET RENO, DEFENDANT
GEORGE PRICE, AND NINE OTHERS,
INTERVENOR-DEFENDANT

Assigned to: Judge Charles R. Richey
Circuit Judge Laurence H. Silberman
Judge Gladys Kessler
Referred to: Three Judge Panel

Demand: $0,000 Nature of Suite: 890
Lead Docket: None Jurisdiction: US Defendant
Dkt# in other court: None

Cause: 42:1973 Voting Rights Act
Case type: 1. civil 2. null

James J. Thornton
(318) 221-6294
[COR NTC phv]
642 Stoner Avenue
Shreveport, LA 71105

Gaye L. Hume
(202) 307-6302
[COR LD NTC gvt]
Nancy Sardeson
(202) 307-6264
[COR LD NTC]
U.S. DEPARTMENT OF JUSTICE
Civil Rights Division
P.O. Box 66128
Washington, DC 20035

Patricia A. Brannan
(202) 637-8686
[COR LD NTC]
HOGAN & HARTSON, L.L.P.
Columbia Square
555 13th Street, NW
Washington, DC 20004-1109

Samuel L. Walters
(202) 662-8322
Suite 400
[COR NTC ret]
LAWYERS' COMMITTEE
FOR CIVIL RIGHTS
1450 G Street, NW
Washington, DC 20005

LEROY HARRY intervenor-defendant	Samuel L. Walters (See above) [COR LD NTC ret]
THELMA HARRY intervenor-defendant	Samuel L. Walters (See above) [COR LD NTC ret]
CLIFFORD DOSS intervenor-defendant	Samuel L. Walters (See above) [COR LD NTC ret]

JERRY HAWKINS intervenor-defendant	Samuel L. Walters (See above) [COR LD NTC ret]
ODIS EASTER intervenor-defendant	Samuel L. Walters (See above) [COR LD NTC ret]
BARBARA STEVENS KING intervenor-defendant	Samuel L. Walters (See above) [COR LD NTC ret]
HURIE JONES intervenor-defendant	Samuel L. Walters (See above) [COR LD NTC ret]
GROVER CLEVELAND JAGGERS intervenor-defendant	Samuel L. Walters (See above) [COR LD NTC ret]
FLOYD MARSHALL intervenor-defendant	Samuel L. Walters (See above) [COR LD NTC ret]
RUBIE FOULER intervenor-defendant	Samuel L. Walters (See above) [COR LD NTC ret]

7/8/94	1	ORDER by Chief Judge John G. Penn: authorizing James J. Thornton, Jr. to appear in this Court in behalf of Bossier Parish for the sole and limited purpose of representing the School Board in its request for a declaratory judgment approving its redistricting plan as being in conformity with the Voting Rights Act of 1965 and the Constitution of the United States. (N) (jeb) [Entry date 07/14/94]
7/8/94	2	COMPLAINT filed by plaintiff(s) BOSSIER PARISH (jeb)[Entry date 07/14/94]
7/8/94	—	SUMMONS(2) issued to federal party(s) defendant JANET RENO, and non-parties: U.S. Attorney and U.S. Attorney General. (jeb) [Entry date 07/14/94]
7/14/94	—	MAILED CJRA brochure, Meet and Confer list, and Notice regarding dismissal to plaintiff(s) BOSSIER PARISH. (jeb)
7/14/94	—	MAILED CJRA brochure, Meet and Confer list, and Notice regarding dismissal to plaintiff(s) BOSSIER PARISH. (jeb)
7/25/94	3	ORDER by Judge Charles R. Richey: directing Clerk of Court to make copies of the complaint and this order and provide them to the U.S. Marshals' Service for service of same upon the AUSA; directing AUSA to show cause why this case is cognizable in this Court and whether a three-Judge Court should be convened, and response to show cause due 4:00 7/29/94; (N) (jeb)

7/26/94	—	SHOW CAUSE issued to defendant JANET RENO (James Thornton, Office of Asst. Attorney General). (dbw) [Entry date 07/28/94]
7/29/94	5	RESPONSE by defendant JANET RENO to Court's show cause order [4-1] (cjp) [Entry date 08/03/94]
8/1/94	4	ORDER by Judge Charles R. Richey: directing that pursuant to 42 USC 1973c, a Three Judge District Court shall be convened to hear and determine this action for declaratory judgment under Section of the Voting Rights Act of 1965, as amended; referring case to the Chief Judge of the USCA for appointment of the other two members of the three judge panel. (N) (jeb)
8/5/94	6	COPY of Order filed in USCA dated 8/4/94, designating Laurence H. Silberman, Circuit Judge, Gladys Kessler, District Judge, to serve with Charles R. Richey, District Judge, to hear and determine this action. (gt)
8/5/94	—	CASE ASSIGNED to Three Judge Panel consisting of: District Judge Charles R. Richey, Circuit Judge Laurence H. Silberman and District Judge Gladys Kessler. (gt)
8/11/94	7	RETURN OF SERVICE/AFFIDAVIT executed upon Asst. U.S. Attorney General on 8/8/94 (lpp) [Entry date 08/17/94]

8/11/94	8	RETURN OF SERVICE/AFFIDAVIT executed on 8/3/94 upon James J. Thornton, Esquire, pursuant to Court Order. (lpp) [Entry date 08/17/94]
8/22/94	—	STATUS HEARING before Judge Charles R. Richey & Judge Gladys Kessler: discovery due 10/14/94; plaintiff's dispositive motions due 4:00 10/26/94; defendant and applicant intervenor defendant's response to dispositive motions due 4:00 11/9/94; plaintiff and defendant to file views on the aspect of the South Carolina Case due 8/24/94 by 4:00 p.m; applicant intervenor defendant to file views on case on 8/26/94 by 4:00 p.m. Reporter: Frank Rangus (jeb)
8/22/94	9	MOTION filed by movant GEORGE PRICE and (9) nine others for leave to intervene Attachments (2), EXHIBIT: ANSWER (lpp) [Entry date 08/24/94]
8/23/94	10	MEMORANDUM by defendant JANET RENO; attachments (5) (clv) [Entry date 08/25/94]
8/23/94	11	TRANSCRIPT filed for date(s) of 08/22/94. Reporter: Frank Rangus (jeb) [Entry date 08/26/94] [Edit date 08/26/94]
8/23/94	13	MEMORANDUM by defendant JANET RENO response to this Court's inquiry at the 8/22/94, status conference as to why this Court should not enter injunctive relief, Exhibit (A), Attachments (6) (lpp) [Entry date 08/30/94]

8/25/94	12	MEMORANDUM by plaintiff(s) BOSSIER PARISH on enjoining proceedings in the Middle District of Louisiana in Knight, et al. v. McKeithen, et al. (jeb) [Entry date 08/26/94]
8/26/94	15	MEMORANDUM by movant GEORGE PRICE for intervention, Exhibit (1) (lpp) [Entry date 09/07/94]
8/31/94	14	ORDER by Judge Charles R. Richey: discovery due 4:00 10/14/94; directing the plaintiff and defendant file briefs on injunction issue due 4:00 p.m. 8/24/94; prospective intervenors to file brief on injunction issue due 8/26/94; granting plaintiff leave to file its brief on injunction issue by facsimile; plaintiff to file briefs and dispositive motions due 4:00 10/26/94; defendant and prospective intervenors to file their briefs and dispositive motions due 4:00 11/9/94; directing parties to submit direct testimony in narrative form (N) (jeb)
9/8/94	16	MEMORANDUM OPINION by Judge Charles R. Richey (N) (jeb)
9/8/94	17	ORDER by Judge Charles R. Richey: granting motion for leave to intervene [9-1] by GEORGE PRICE; advising counsel that the Court shall not issue an injunction at this time, but the Court may revisit this issue at a future time, as may be appropriate. (N) (jeb)

9/8/94	21	ANSWER by Defendants-Intervenors TO COMPLAINT [2-1] . (lpp) [Entry date 09/29/94]
9/13/94	18	ATTORNEY APPEARANCE for defendant JANET RENO by Gaye L. Hume (kmk) [Entry date 09/14/94]
9/13/94	19	ANSWER TO COMPLAINT [2-1] by defendant JANET RENO. (kmk) [Entry date 09/14/94]
9/26/94	20	MOTION filed by plaintiff(s) BOSSIER PARISH for relieve complainants of duty to answer certain interrogatories and requests for production of documents, Affidavit (1), Exhibit (1) (lpp) [Entry date 09/29/94]
9/26/94	22	RESPONSE by intervenors in opposition to motion for relieve complainants of duty to answer certain interrogatories and requests for production of documents [20-1] by BOSSIER PARISH, Attachment: (1). (lpp) [Entry date 09/29/94]
10/3/94	23	REQUEST by intervenor GEORGE PRICE for admissions for plaintiff(s) BOSSIER PARISH, Attachments (21) (lpp) [Entry date 10/05/94]
10/6/94	24	ORDER by Judge Charles R. Richey: denying motion for relieve complainants of duty to answer certain interrogatories and requests for production of documents [20-1] by BOSSIER PARISH; granting the defendant-intervenors' objections; denying and overruling the plaintiff's objections (N) (jeb)

10/17/94	25	NOTICE OF FILING by defendant JANET RENO, of an agreed order extending discovery period and certain related filing deadlines, Exhibit (1) (lpp) [Entry date 10/18/94]
10/25/94	26	STIPULATED ORDER by Judge Charles R. Richey: discovery due 10/28/94; plaintiffs' briefs and dispositive motions due 11/9/94; extending time to file proposed findings of fact and conclusions of law due 11/7/94; extending time to 11/23/94 for defendant and defendant-intervenors' briefs and dispositive motions to be filed; (N) (jeb)
11/9/94	27	ORDER by Judge Charles R. Richey: All prior ORders shall remain in full force; Counsel for parties shall Meet Confer hearing set for 4:00 11/18/94, Counsel for parties shall file statements of material facts due by 4:00 11/21/94, and cross motions for summary judgment due 4:00 11/21/94; response to motions for summary judgment due 4:00 11/30/94, reply motions for summary judgment due 4:00 12/5/94; (N) (lpp) [Entry date 11/14/94]
11/9/94	28	ORDER by Judge Charles R. Richey: Meet Confer hearing set for 4:00 11/18/94, statement of material facts which are not in dispute due 4:00 11/21/94;, cross motions for summary judgment due 4:00 11/21/94; response to motion for summary judgment due 4:00 11/30/94 reply motion for summary judgment due 4:00 12/5/94; (N) (lpp) [Entry date 11/14/94]

11/10/94 29 PRETRIAL STATEMENTS by plaintiff BOSSIER PARISH (lpp) [Entry date 11/14/94]

11/16/94 30 MOTION filed by plaintiff BOSSIER PARISH to extend time to comply with the Court Order 11/9/94, Attachment (3) (lpp) [Entry date 11/17/94]

11/17/94 31 RESPONSE by defendant JANET RENO to motion to extend time to comply with the Court Order 11/9/94 [30-1] by BOSSIER PARISH (ted) [Entry date 11/18/94]

11/17/94 32 REQUEST by defendant JANET RENO for clarification (ted) [Entry date 11/18/94]

11/17/94 33 MEET AND CONFER STATEMENT/REPORT PURSUANT TO L.R. 206(d) filed by plaintiff BOSSIER PARISH, defendant JANET RENO, intervenor GEORGE PRICE. (ted) [Entry date 11/18/94]

11/18/94 — Tele-conference before Judge Charles R. Richey reporter: Frank Rangus (jeb)

11/21/94 34 ORDER by Judge Charles R. Richey: all prior Orders shall remain in full force and effect, except as modified herein (N) (dbw)

11/23/94 35 PRETRIAL STATEMENTS by intervenor GEORGE PRICE, attachments (2) (lpp) [Entry date 11/25/94]

11/25/94 36 PRETRIAL STATEMENTS by defendant JANET RENO, attachments (3) (lpp) [Entry date 11/28/94]

11/30/94 37 JOINT MEMORANDUM by intervenor-defendants of findings of fact and conclusions of law (lpp) [Entry date 12/01/94]

12/19/94 38 NOTICE OF FILING by defendant JANET RENO: Final Version of Direct Testimony (14), bulky pleading (lpp) [Entry date 12/21/94]

12/20/94 39 NOTICE OF FILING by intervenor GEORGE PRICE: Addendum to DIrect[o] Testimony of William Cooper and Jerry Hawkins (2) (lpp) [Entry date 12/22/94]

12/20/94 40 NOTICE OF FILING by defendant JANET RENO; of disputed portions of direct testimony.; attachments (blj) [Entry date 12/22/94]

12/20/94 41 NOTICE OF FILING by defendant JANET RENO of original final version of direct testimony of Gary Dillard Joiner; attachments (1) (blj) [Entry date 12/22/94]

12/21/94 42 NOTICE OF FILING by plaintiff BOSSIER PARISH: Rebuttal Testimony (2) (lpp) [Entry date 12/23/94]

12/22/94 43 NOTICE OF FILING by defendant JANET RENO, intervenor GEORGE PRICE: Filing of Disputed portions of Rebuttal Testimony (2), Attachment (2) (lpp) [Entry date 12/23/94]

1/3/95	44	NOTICE OF FILING by defendant JANET RENO/United States: Corrected Pleading - Notice By U.S. and Defendant-Intervenors of filing of disputed portions of rebuttal testimony, Exhibit (1), Attachment (2) (lpp) [Entry date 01/06/95] [Edit date 03/30/95]
1/10/95	45	ORDER by Judge Charles R. Richey: directing counsel to advise Judge Richey, in writing, by 1/17/95 4:00 p.m. as to whether they consent to having undersigned Judge hear testimony and evidence, and transmit ensuing record to Circuit Judge Silberman and District Judge Kessler for review; upon review, the three Judges shall have oral argument to consider the record and briefs of Counsel; telephonic status hearing set for 2:00 1/18/95 (N) (dbw)
1/18/95	—	STATUS HEARING (TELECONFERENCE) before Judge Charles R. Richey: bench trial set for 10:00 4/10/95 Reporter: Susan Tyner (dbw)
1/18/95	46	ORDER by Judge Charles R. Richey: directing Counsel to meet and confer by 2/20/95 4:00 p.m. and file stipulations of fact and law and evidentiary objections by 3/20/95 4:00 p.m.; exhibit list and witness list due 3/20/95 4:00 p.m.; trial set for 10:00 4/10/95 and continuing the next day thereafter; all prior Orders shall remain in full force and effect (N) (dbw) [Entry date 01/19/95]

2/3/95	47	JOINT MOTION by plaintiff BOSSIER PARISH, defendant JANET RENO, intervenor GEORGE PRICE to modify scheduling order; Attachment (ted) [Entry date 02/06/95]
2/3/95	48	JOINT MOTION by plaintiff BOSSIER PARISH, defendant JANET RENO, intervenor GEORGE PRICE to expedite ruling on defendants' motion to exclude testimony; Attachment (ted) [Entry date 02/06/95]
2/3/95	49	MOTION filed by defendant JANET RENO to exclude testimony; Attachment (ted) [Entry date 02/06/95]
2/14/95	50	RESPONSE (OPPOSITIONS) by plaintiff BOSSIER PARISH to Defendants and Intervenors' objections to testimony of complainant's witnesses, attachment (1) (lpp) [Entry date 02/15/95]
2/17/95	51	NOTICE OF FILING by intervenor GEORGE PRICE: Direct Tesdtimony [*sic*] of David Creed, letter (1) fiat 02/22/95 (lpp) [Entry date 02/23/95]
2/24/95	52	REPLY by defendant JANET RENO, intervenor GEORGE PRICE to response [50-1] by BOSSIER PARISH, Exhibits (4). (lpp) [Entry date 02/27/95]
3/17/95	53	EXHIBIT list by plaintiff Bossier Parish School Board (lpp) [Entry date 03/20/95]
3/17/95	54	WITNESS LIST by plaintiff BOSSIER PARISH (lpp) [Entry date 03/20/95]

3/17/95 63 DEPOSITION of Bob G. Burford taken by plaintiff BOSSIER PARISH, defendant JANET RENO, intervenor GEORGE PRICE on 10/12/94. (lpp) [Entry date 03/23/95]

3/20/95 55 EXHIBIT list by defendant-intervenors (lpp) [Entry date 03/21/95]

3/20/95 56 STIPULATION filed by Bossier Parish School Board, Plaintiff; Janet Reno, Defendant; George Price, Defendant-Intervenors et al. regarding Fact and Law. (N) (lpp) [Entry date 03/21/95] [Edit date 03/21/95]

3/20/95 57 NOTICE OF FILING by defendant JANET RENO: Final Versoion [*sic*] of Direct Testimony (lpp) [Entry date 03/21/95]

3/20/95 58 STIPULATION filed by Bossier Parish School Board, Plaintiff and Janet Reno, Defendant and George Price et al. Defendant-Intervenors, regarding: Exhibits. (N) (lpp) [Entry date 03/21/95]

3/20/95 59 MOTION filed by defendant JANET RENO to excude exhibit of plaintiff (lpp) [Entry date 03/21/95]

3/20/95 60 EXHIBIT list by Janet Reno, Defendant (lpp) [Entry date 03/21/95]

3/21/95 61 DEPOSITION of Paul Caplis taken by plaintiff BOSSIER PARISH, defendant JANET RENO, intervenor GEORGE PRICE on 10/13/94. (lpp) [Entry date 03/23/95]

3/21/95 62 DEPOSITION of James M. Bullers taken by plaintiff BOSSIER PARISH, defendant JANET RENO, intervenor GEORGE PRICE on 3/21/95. (lpp) [Entry date 03/23/95]

3/21/95 64 DEPOSITION of William Johnston taken by plaintiff BOSSIER PARISH, defendant JANET RENO, intervenor GEORGE PRICE on 10/12/94. (lpp) [Entry date 03/23/95]

3/21/95 65 JOINT STATEMENT OF OBJECTIONS by defendant JANET RENO, intervenor GEORGE PRICE to plaintiffs designation of deposition testimony of James Bullers [62-1] by GEORGE PRICE, JANET RENO, BOSSIER PARISH (dcn) [Entry date 03/23/95]

3/21/95 66 WITNESS LIST by defendant JANET RENO, intervenor GEORGE PRICE (dcn) [Entry date 03/23/95]

3/21/95 67 JOINT DESIGNATIONS OF PORTIONS OF DEPOSITION TESTIMONY of James Ramsey taken by plaintiff BOSSIER PARISH, defendant JANET RENO, intervenor GEORGE PRICE on 10/13/94. (dcn) [Entry date 03/23/95]

3/21/95 68 JOINT DESIGNATIONS OF PORTIONS OF DEPOSITION TESTIMONY of JAMES ELKINS taken by plaintiff BOSSIER PARISH, defendant JANET RENO, intervenor GEORGE PRICE on 10/12/94. (dcn) [Entry date 03/23/95]

3/22/95 69 JOINT STATEMENT OF OBJECTIONS by defendant JANET RENO, intervenor GEORGE PRICE to plaintiffs cross-designations of deposition testimony of school board members (dcn) [Entry date 03/23/95]

3/22/95 70 JOINT DESIGNATION OF PORTIONS OF DEPOSITION TESTIMONY of MARGUERITE HUDSON taken by plaintiff BOSSIER PARISH, defendant JANET RENO, intervenor GEORGE PRICE on 09/29/94. (dcn) [Entry date 03/23/95]

3/22/95 71 JOINT DESIGNATIONS OF PORTIONS OF DEPOSITION TESTIMONY of JUANITA JACKSON taken by plaintiff BOSSIER PARISH, defendant JANET RENO, intervenor GEORGE PRICE on 9/29/94. (dcn) [Entry date 03/23/95]

3/22/95 72 JOINT DESIGNATION OF PORTIONS OF DEPOSITION TESTIMONY of David Harvey taken by defendant JANET RENO, intervenor GEORGE PRICE on 9/30/94. (dcn) [Entry date 03/23/95]

3/22/95 73 JOINT DESIGNATION OF PORTIONS OF DEPOSITION TESTIMONY of BARBARA BAYLOCK taken by defendant JANET RENO, intervenor GEORGE PRICE on BARBARA BLAYLOCK. (dcn) [Entry date 03/23/95]

3/22/95 74 JOINT DESIGNATIONS OF PORTIONS OF DEPOSITION TESTIMONY of RUTH SULLIVAN taken by plaintiff BOSSIER PARISH, defendant JANET RENO, intervenor GEORGE PRICE on 9/29/95. (dcn) [Entry date 03/23/95]

3/22/95 75 JOINT DESIGNATION OF PORTIONS OF DEPOSITION TESTIMONY of BARBARA GRAY taken by plaintiff BOSSIER PARISH, defendant JANET RENO, intervenor GEORGE PRICE on BARBARA GRAY. (dcn) [Entry date 03/23/95]

3/22/95 76 JOINT DESIGNATIONS OF PORTIONS OF DEPOSITION TESTIMONY of SUSAN BARERRA taken by plaintiff BOSSIER PARISH, defendant JANET RENO, intervenor GEORGE PRICE on 9/30/95. (dcn) [Entry date 03/23/95]

3/22/95 77 JOINT DESIGNATIONS OF PORTIONS OF DEPOSITION TESTIMONY of BOYCE HENSLEY taken by plaintiff BOSSIER PARISH, defendant JANET RENO, intervenor GEORGE PRICE on 9/30/95. (dcn) [Entry date 03/23/95]

3/22/95 78 JOINT DESIGNATIONS OF PORTIONS OF DEPOSITION TESTIMONY of MICHELLE RODGERS taken by plaintiff BOSSIER PARISH, defendant JANET RENO, intervenor GEORGE PRICE on 9/30/95. (dcn) [Entry date 03/23/95]

3/22/95	79	JOINT DESIGNATIONS OF PORTIONS OF DEPOSITION TESTIMONY of HENRY BURNS taken by plaintiff BOSSIER PARISH, defendant JANET RENO, intervenor GEORGE PRICE on 10/6/94. (dcn) [Entry date 03/23/95]
3/29/95	80	MOTION filed by defendant JANET RENO the United States seeks permission to subpoena witnesses, attachment (a) (lpp) [Entry date 03/31/95]
4/3/95	81	ORDER by Judge Charles R. Richey: granting motion of the United States seeking permission to subpoena witnesses [80-1] by JANET RENO (N) (dbw)
4/3/95	82	MOTION filed by plaintiff BOSSIER PARISH to add additional counsel, Affidavit (1) (lpp) [Entry date 04/04/95]
4/4/95	85	MOTION filed by intervenor GEORGE PRICE seeking permission to subpoena witnesses (lpp) [Entry date 04/07/95]
4/6/95	83	ENTERED IN ERROR (lpp)
4/6/95	—	Tele-conference before Judge Charles R. Richey: bench trial remains set for 4/10/95 10:00 a.m. Reporter: Susan Tyner (dbw) [Entry date 04/07/95]
4/6/95	84	ORDER by Judge Charles R. Richey: authorizing Frank M. Ferrell to assist as additional attorney of record for complainant in prosecution of its cause in this court [82-1] (N) (dbw) [Entry date 04/07/95]

4/7/95	86	ORDER by Judge Charles R. Richey: granting motion seeking permission to subpoena witnesses [85-1] by GEORGE PRICE (N) (dbw)
4/7/95	88	AMENDED JOINT DESIGNATIONS of portions of deposition testimony of Ruth Sullivan; attachment. (jeb) [Entry date 04/11/95]
4/7/95	89	AMENDED JOINT DESIGNATIONS of portions of deposition testimony of Marquerite Hudson; attachment. (jeb) [Entry date 04/11/95]
4/7/95	90	AMENDED JOINT DESIGNATIONS of portions of deposition testimony of Michelle Rodgers; attachment. (jeb) [Entry date 04/11/95]
4/7/95	91	AMENDED JOINT DESIGNATIONS of portions of deposition testimony of Barbara Blaylock; attachment. (jeb) [Entry date 04/11/95]
4/7/95	92	EXHIBIT list of defendant United States. (jeb) [Entry date 04/11/95]
4/7/95	93	AMENDED JOINT DESIGNATIONS of portions of deposition testimony of David Harvey; attachment. (jeb) [Entry date 04/11/95]
4/7/95	94	NOTICE OF FILING of supplemented direct testimony of S.P. Davis; attachment. (jeb) [Entry date 04/11/95]
4/7/95	95	NOTICE OF FILING of corrected direct testimony of Dr. George Castille; attachment. (jeb) [Entry date 04/11/95]

4/7/95	96	NOTICE OF FILING (jeb) [Entry date 04/11/95]
4/7/95	97	AMENDED JOINT STATEMENT OF OBJECTIONS by defendant JANET RENO, intervenor-defendant GEORGE PRICE to plaintiff's cross-designations of deposition testimony of school board members. (jeb) [Entry date 04/11/95]
4/7/95	98	FINAL STIPULATIONS of fact and law. (jeb) [Entry date 04/11/95] [Edit date 04/11/95]
4/7/95	99	RESPONSE (OPPOSITIONS) by plaintiff BOSSIER PARISH to objection [97-1] by GEORGE PRICE, JANET RENO (lpp) [Entry date 04/12/95]
4/7/95	100	RESPONSE by plaintiff BOSSIER PARISH to motion to excude exhibit of plaintiff [59-1] by JANET RENO (lpp) [Entry date 04/12/95]
4/10/95	—	NON-JURY TRIAL before Judge Charles R. Richey begun and continued to 9:30 4/11/95. Reporter: Susan Tyner (dbw)
4/10/95	87	ORDER by Judge Charles R. Richey: directing counsel not to use word "expert", but instead shall refer to such persons as "opinion" witnesses during trial; Attachment (1) (N) (dbw) [Edit date 04/11/95]
4/11/95	—	NON-JURY TRIAL before Judge Charles R. Richey resumed and concluded; case [0-0] taken under advisement; proposed findings of fact due 5/3/95 4:00 p.m. Reporter: Susan Tyner (dbw) [Edit date 04/11/95]

4/12/95	101	ORDER by Judge Charles R. Richey: proposed findings of fact due 4/28/95; marked-up proposed findings of fact due by 4:00 5/5/95; advising parties that when the Court issues its findings of fact, a briefing and oral argument schedule shall be issued. (N) (dbw)
4/19/95	102	TRANSCRIPTS (2) filed for dates of 4/10/95; 4/11/95. Volumes I and II. Reporter: Susan Page Tyner (bm) [Entry date 04/21/95]
5/5/95	103	NOTICE OF FILING by defendant JANET RENO, intervenor-defendant GEORGE PRICE of marked-up proposed findings of fact and conclusions of law of plaintiff; attachment. (jeb) [Entry date 05/08/95]
5/5/95	104	NOTICE OF FILING by plaintiff BOSSIER PARISH of marked-up proposed findings of fact and conclusions of law of defendant and defendant-intervenor; attachment. (jeb) [Entry date 05/08/95]
5/15/95	105	ORDER by Judge Charles R. Richey: deferring ruling on the facts until after the Opinions are handed down in related cases before the U.S. Supreme Court; directing that on the tenth business day following the Supreme Court's issuance of its opinion in the related cases, counsel for all parties shall file simultaneous briefs on the law as a supplement to the factual supplements already filed; oral argument as to the facts of the law set for 9:30 7/19/95; (N) (jeb)

5/25/95	106	ORDER by Judge Charles R. Richey: setting oral argument as to the facts and the law for 9:30 a.m. 7/27/95 and continuing thereafter until 12:00 p.m. of the same day with the understanding that counsel for all parties shall meet and confer prior to argument to divide up the time among themselves in such manner as they deem fit (N) (dbw)
7/11/95	107	ORDER by Judge Charles R. Richey: reminding counsel, pursuant to Court's Order of 5/15/95, they are [to] file final briefs with respect to further issues herein and the two Supreme Court Opinions entitled US v. Hays and Miller v. Johnson by 4:00 on 7/14/95; directing Clerk of Court to telephone contents of this Order to Counsel for all parties (N) (dbw)
7/12/95	108	SUPPLEMENTAL BRIEF by plaintiff BOSSIER PARISH; attachment (post-trial brief); exhibits (4) (No signature on pleading). (jmf) [Entry date 07/13/95] [Edit date 07/13/95]
7/14/95	109	POST TRIAL BRIEF by defendant JANET RENO (BULKY PLEADING) (jmf) [Entry date 07/18/95]
7/14/95	110	POST TRIAL BRIEF by intervenor-defendant GEORGE PRICE (jmf) [Entry date 07/18/95]
7/24/95	111	NOTICE OF FILING by defendant JANET RENO of unreported decision and errata to post-trial brief; Attachments (2) (ted) [Entry date 07/25/95]

7/27/95	—	ORAL ARGUMENT held before Circuit Judge Laurence Silberman, Judge Charles R. Richey, and Judge Gladys Kessler. Reporter: Susan Tyner (dbw)
8/23/95	112	TRANSCRIPT filed for Oral Argument held on date(s) of July 27, 1995. Reporter: Susan Page Tyner (jmf)
11/2/95	113	MEMORANDUM OPINION FOR THE COURT by Judge Laurence H. Silberman and Judge Charles R. Richey granting plaintiff Bossier Parish School Board the requested declaratory judgment (N); APPENDIX (2) (dbw) [Entry date 11/03/95]
11/2/95	114	MEMORANDUM OPINION by Judge Gladys Kessler concurring in part and dissenting in part (N) (dbw) [Entry date 11/03/95]
11/2/95	115	ORDER by Judge Laurence H. Silberman and Judge Charles R. Richey: plaintiff Bossier Parish School Board shall be, and hereby is, given preclearance for its election plan adopted on October 1, 1992, and shall have a declaratory judgment to that effect (N) (dbw) [Entry date 11/03/95]

12/27/95 116 (ENTERED IN ERROR) NOTICE OF APPEAL by defendant JANET RENO from order plaintiff Bossier Parish School Board shall be, and hereby is, given preclearance for its election plan adopted on October 1, 1992, and shall have a declaratory judgment to that effect [115-1], order [115-2], entered on: November 03, 1995. No fee paid U.S. Gov't; Copies mailed to James J. Thornton, Nancy Sardeson, Gaye L. Hume, Patricia A. Brannan and Samuel L. Walters. (jmf) [Entry date 12/28/95] [Edit date 01/30/96]

12/27/95 119 NOTICE OF APPEAL by defendant JANET RENO to the U.S. Supreme Court from order plaintiff Bossier Parish School Board shall be, and hereby is, given preclearance for its election plan adopted on October 1, 1992, and shall have a declaratory judgment to that effect [115-1], order [115-2], entered on: November 03, 1995. (jmf) [Entry date 01/30/96]

12/28/95 — TRANSMITTED PRELIMINARY RECORD on appeal [116-1] by JANET RENO to U.S. Court of Appeals (jmf)

1/2/96 117 NOTICE OF FILING by defendant JANET RENO of clarification on service of previously filed notice of appeal. (jmf) [Entry date 01/03/96]

1/2/96 118 NOTICE OF APPEAL by intervenor-defendants' to the U.S. Supreme Court from order plaintiff Bossier Parish School Board shall be, and hereby is, given preclearance for its election plan adopted on October 1, 1992, and shall have a declaratory judgment to that effect [115-1], entered on: $5.00 filing fee paid. November 03, 1995. (jmf) [Entry date 01/03/96]

3/1/96 120 LETTER received from Supreme Court of the U.S. that the application for extension of time within which to docket an appeal has been granted to and including March 11, 1996 (jmf) [Entry date 03/06/96]

3/4/96 121 LETTER from the Supreme Court of the U.S. that the application for an extension within which to docket an appeal has been granted to and including March 18, 1996. (jmf) [Entry date 03/06/96]

[DOJ letterhead omitted]

May 31, 1990

Ms. Cheryl G. Martin
Secretary-Treasurer
Bossier Parish Police Jury
P. O. Box 68
Benton, Louisiana 71006

Dear Ms. Martin:

This refers to Ordinance No. 3101 (1989) which provides for realignment of voting precincts for Bossier Parish, Louisiana, submitted to the Attorney General pursuant to Section 5 of the Voting Rights Act of 1965, as amended, 42 U.S.C. 1973c. We received your submission on April 2, 1990.

The Attorney General does not interpose any objection to the change in question. However, we feel a responsibility to point out that Section 5 of the Voting Rights Act expressly provides that the failure of the Attorney General to object does not bar any subsequent judicial action to enjoin the enforcement of such change. See the Procedures for the Administration of Section 5 (28 C.F.R. 51.41).

Sincerely,

John R. Dunne
Assistant Attorney Ceneral
Civil Rights Division

/s/ BARRY H. WEINBERG
By: BARRY H. WEINBERG
Acting Chief, Voting Section

[DOJ letterhead omitted]

July 29, 1991

Mr. James W. Ramsey
Bossier Parish Police Jury
P. 0. Box 68
Benton, Louisiana 71006

Dear Mr. Ramsey:

This refers to the 1991 redistricting plan for the police jury, the precinct realignment, twelve polling place changes, and the creation of seventeen new voting precincts and the polling places therefor for Bossier Parish, Louisiana, submitted to the Attorney General pursuant to Section 5 of the Voting Rights Act of 1965, as amended, 42 U.S.C. 1973c. We received your initial submission on May 28, 1991; supplemental information was received on July 19, 1991.

The Attorney General does not interpose any objection to the specified changes. However, we note that Section 5 expressly provides that the failure of the Attorney General to object does not bar subsequent litigation to enjoin the enforcement of the changes. In addition, as authorized by Section 5, we reserve the right to reexamine this submission if additional information that would otherwise require an objection comes to our attention during the remainder of the sixty-day review period. See the Procedures for the Administration of Section 5 (28 C.F.R. 51.41 and 51.43).

Sincerely,

John R. Dunne
Assistant Attorney General
Civil Rights Division

/s/ GERALD W. JONES
By: GERALD W. JONES
Chief, Voting Section

[Extract of minutes of Bossier Parrish Police Jury Meeting 1/11/94, P. Exh. 5]

Mr. Avery stated that he has spoken to Mr. Gary Joiner regarding the current issue of the Bossier Parish School Board's struggle for approval of its reapportionment plan by the Justice Department. The school board has submitted the same plan which the Justice Department approved for the police jury two years ago, but has been denied approval. Motion was made by Mr. Meachum, seconded by Mr. Glorioso, that the Bossier Parish Police Jury clarify that it stands by its original reapportionment plan. Mr. Darby stated that he is concerned that if the school board and the police jury have different district lines, it will be confusing to Bossier Parish citizens. However, Mr. Darby indicated that he supports the police jury's original plan. Mr. Bullers, District Attorney, stated that he does not understand the position of the Justice Department and that he feels the school board will ultimately end up in court with a judge making the final decision. Votes were cast on Mr. Meachum's motion to make public the police jury's intention to maintain its current district lines. Motion carried unanimously.

This is to certify that this a true and correct copy of an extract of the minutes of the Bossier Parish Police Jury Meeting held in the Bossier Parish Courthouse in Benton, La. on the 11 day of Jan., 1994. Given under my hand and seal of the Bossler Parish Policy Jury on the 7 day of Feb., 1995.

/s/ CHERYL G. MARTIN
Secretary-Treasurer

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF LOUISIANA

Civil Action
Number 94-848-A2

Honorable John V. Parker
August 23, 1994

REVEREND JESSE CARROLL KNIGHT, SR., ET AL.,
PLAINTIFF
v.
W. FOX MCKEITHEN, ET AL., DEFENDANTS

COURT'S FINDINGS OF FACT AND CONCLUSIONS OF LAW

Appearances

For the Plaintiff:

Ms. Patricia A. Brannan
Attorney at Law

Mr. John W. Borkowski
Attorney at Law

Mr. Samuel L. Walters
Attorney at Law

For the East Carroll Parish School Board:

Mr. Michael Lancaster
Attorney at Law

Mr. James D. Caldwell
Attorney at Law

For the St. Mary Parish School Board:

Mr. James McClelland
Attorney at Law

For the Bossier Parish School Board:

Mr. James Thornton
Attorney at Law

Mr. Frank M. Ferrell
Attorney at Law

For the Secretary of State:

Ms. Sheri Morris
Attorney at Law

For Richard Ieyoub:

Ms. Angie Laplace
Attorney at Law

For the United States:

Ms. Nancy Sardeson
Attorney at Law

Reported by: Kay Raborn, C.C.R.
Official Court Reporter

THE COURT: All right, this will be the court's findings of fact and conclusions of law, at least to the extent that we can put something together, subject, of course, to further additional findings and conclusions should that become appropriate.

This matter is before the court on a motion for preliminary injunction filed on behalf of the plaintiffs, who are alleged to be black citizens and registered voters of East Carroll and Bossier parishes, insofar as is currently material. And there is, of course, no evidence to the contrary.

They allege that the school boards are threatening to deprive the plaintiffs of their right to participate equally in public school board elections conducted under lawful non-discriminatory redistricting plans pursuant to the schedule prescribed by state law for the conduct of such elections in violation of the 14th and 15th Amendments, Sections 2 and 5 of the Voting Rights Act for 1965 and 42 U.S.C. Section 1983.

It is undisputed that both East Carroll and Bossier parishes have not adopted and placed into effect redistricting plans for the school board. I said East Carroll and Bossier parishes. I mean, East Carroll and Bossier parishes school boards have not adopted and set into effect redistricting plans for those respective boards, as they are required to do, both by the state law and, of course, by federal law.

Accordingly, the thrust of this litigation has to be to take appropriate steps since it is undisputed that there is a violation of law to take appropriate steps to remedy the violation. I repeat, for purposes of clarity, that the only violation is the one-man-one-vote principle.

There are alleged violations of Section 2 of the Voting Rights Act, but that is not relevant to any issue presently before the court. The only relevance to Section 2 is that in ordering a reapportionment redistricting, the court, the board, or anybody else attempting to draw a plan, must comply with all measures of law, including Section 2 of the Voting Rights Act.

In addition, if this court starts drawing any plans, the court should comply or the plan adopted by the court, ordered by the court, should comply, in every possible respect, with all portions of state law, which are not contradictory to federal law. It is, I think, pretty clearly established that district courts do have power to fashion interim remedies and to order interim plans into effect where necessary, whether there is any violation of federal law, including a violation of the one-man-one-vote principle.

Elections, of course, are presently scheduled according to the State's regular timetable, throughout the State for school boards, and we have stipulated that if this court orders interim plans into effect, that qualification to run for office under that plan would be tomorrow, August 24th, and the next day, August 25th, as I recall.

Was it two, or three days, Ms. Morris?

MS. MORRIS: Three

THE COURT: Consequently, there is a great need for haste.

Now, in compliance with Section 2 of the Voting Rights Act, that provision reads, in part, a violation of subsection A is established, if based on the totality of circumstances, as is shown, that the political processes leading to nomination or election in the State or political subdivision are not equally open to partcipation by

members of a class of citizens protected by subsection (a) of this section, in that its members have less opportunity than other members of the electorate to participate in the political process and to elect representatives of their choice. So, that is the goal that we must have in mind when we seek to reapportion the school board.

The plaintiffs have presented a plan, which they say will fully comply, not only with one-man-one-vote, but will fully meet every expectation and requirement of Section 2 of the Voting Rights Act. And I again emphasize that we do not here have any proven violation of Section 2 of the Voting Rights Act. We have a claim by the plaintiffs that District 3 of the plan presented by the defendants does not, in my words, present an equal playing field so that members of the minority do have an opportunity, with other members of the electorate, to participate in the political process and to elect representatives of their choice.

Counsel for the plaintiffs started her oral argument a few moments ago by emphasizing how closely these plans resemble each other. And that seems, to the court, to certainly be correct. If my arithmetic is straight, that is correct. The plaintiffs would add fifty-six black people of voting age to that district and would zone out ninety-two white people of voting age in that district, which would cause the black voting age population to go up from 436 to 492 and the white voting age population to go down from 239 to 147, and would make a tremendous difference in the percentage.

The district, at present, as drawn by the defendants and presented to the Department of Justice, has a voting age black population of 64.6 percent, and under the plaintiffs' suggestion, these small numbers would produce an increase in black voting age population of seventy-seven percent, some thirteen percent increase,

which illustrates that when you're dealing with small numbers, large percentages can result.

There is very little difference between these plans. The testimony of Dr. Weber has convinced me that the district, as drawn, presents a level playing filed for voters of both races.

Section 2 specifically provides nothing in this section establishing a right to have members of a protected class elected in numbers equal to their proportion in the population.

I think the plan drawn by the plaintiffs is what they call, in this type of litigation, packing. The evidence does not convince the court that there is any necessity for packing in this district. The analysis of Dr. Weber of these police jury elections in this same district—well, there are two of them; one in the other District, 3, and one in District 5, where black police jury candidates were not able to win, illustrates to me that had the black population wanted to vote for the black candidate who lost, the black candidate would have won.

In other words, the opportunity, in the words of Section 2, the opportunity is there. By reason of the sixty-five percent black voting age population, this court has no reason to believe that this district is not equally open to participation by members of a class of citizens protected by subsection (a).

In other words, it doesn't seem to me that this geographic drawing is likely to produce a violation of Section 2 of the Voting Rights Act, despite what the Department of Justice may have said. The Department of Justice has to do its thing and the court will have to do its thing, based upon the evidence presented in court.

Since I'm not convinced that there is a need for packing, as the plaintiffs propose, I'm not willing to order the plan presented by the plaintiffs into effect as an interim plan for use in this school board election.

It is highly desirable, however, that there be elections—an election for school board in East Carroll parish. To allow the entire parish to be deprived of the right to vote for members of the school board, because of this small disagreement—well, it's not a small disagreement. It's a very serious disagreement between the plaintiffs and the school board. But a disagreement over this small number of people, to deprive all 9,709 people of the parish the opportunity to vote seems, to me, to be ridiculous.

Under the circumstances, the court exercises its discretion in ordering plan number 6, or whatever you call it, which has been objected to by the Attorney General, in effect for the coming election for school board in East Carroll parish, with the proviso that this will truly be an interim remedy.

This plan and the terms of office of those elected, shall be limited until the next round of elections in the spring of 1995. As I recall, a representative of the secretary of state's office says that's the next time you can have an election in Louisiana.

Is that correct, Ms. Morris?

MS. MORRIS: That's correct.

THE COURT: Whenever those dates are.

MS. MORRIS: April 1st and 29th.

THE COURT: I can't hear you.

MS. MORRIS: They're April 1st and April 29th.

THE COURT: That's the date of the elections?

MS. MORRIS: Yes.

THE COURT: Okay. Well, this is August 23rd. By that time, East Carroll Parish should have in effect a permanent plan which, of course, must be approved by the Department of Justice under Section 5 of the Voting Rights Act.

I don't care what plan is approved. I say approved. They just have no objection. It's not technically unapproved. Perhaps you can work with these plaintiffs and come up with something that the Department of Justice can approve, all the while bearing in mind that you don't want to split precincts or otherwise fail to comply fully with Louisiana law unless it's absolutely necesary to do so.

Whatever the plan is must be resubmitted to the court well in advance. Or, if you want to again submit competing plans, that will be all right, too, because this is only on a motion for preliminary injunction and the merits of the case have yet to be reached. I think perhaps you were wise, counsel, in suggesting that we not advance trial of the merits, as the court suggested the other day. If necessary, the court will fix a time by which you need to resubmit that plan, but right now, I'm not going to do it. I think we're too uncertain as to what the time might be.

As far as I know, that takes care of the business with East Carroll.

There remains on the table the school board of Bossier Parish. Bossier has submitted a plan to the Department of Justice, to which objection has been taken and Bossier has filed suit in the United States District Court for the District of Columbia.

Let me back up one minute. I don't find that the East

Carroll Parish school board has been deliberately dragging its collective feet in an attempt to be dilatory or not reapportion. And there is no evidence before the court that any of what went into their plan is deliberately intentionally racially motivated or intended to dilute black voting strength or otherwise to attempt to penalize or disenfranchise members of the minority.

I think the East Carroll school board, as has been pointed out, is one of the poorest places in the—the parish is one of the poorest places in the United States, and I think the board has attempted to get a redistricting plan in as economical a fashion as possible. And that's one of the reaons they wanted to do it the same way the police jury did. Because they didn't have to hire some high-priced expert to draw them a plan, if they just adopted the police jury plan. And when the Department of Justice offered no objection to the police jury plan, that certainly encouraged them to think that if it's sauce for the goose, it ought to be sauce for the gander. Of course, as it turns out, they were wrong.

Now, back to Bossier. Bossier has submitted the plan to which the Department of Justice has made an objection, and a suit has been filed in the District of Columbia. The Bossier school board had moved for a stay of these proceedings pending the outcome of that proceeding. I don't know whether I formally ruled on that, but if I haven't, that motion for the stay is denied. Obviously, we have proceeded and did proceed.

The situation in Bossier is similar to the situation in East Carroll in that the plan submitted by the Bossier school board to the Department of Justice is identical to that which was submitted by the Bossier police jury to the Department of Justice, to which no objection was made by the Department.

There is perhaps some evidence of some delay on the part of Bossier Parish since the Department of Justice approved the Bossier police jury plan long ago. I've forgotten just how long ago. And there was some time lag between that approval and submission of the school board plan. But I don't find there is any real evidence on the part of Bossier deliberately perpetuating themselves in office, although, that is, of course, the effect of not having approval from the Department of Justice, because of state law, which provides that they shall remain in office until their successors are qualified.

The plaintiffs have proposed an interim plan for Bossier, and, frankly, that plan offends the court because it most nearly resembles an octopus as it stretches out to the nooks and crannies of the parish in order to collect enough black voting age population to create not one, but two, majority black districts in Bossier. The percentage of black voting age population in Bossier Parish, according to the information submitted to me is 17.7 percent and 20.2 percent of the total parish population.

I'm not comfortable with the plan presented by the plaintiffs. I have not had sufficient time or sufficient evidence presented to convince me that some other plan, which complies with Section 2 of the Voting Rights Act, cannot be drawn that will recognize compactness and will not zig-zag all over the parish.

This court is still of the opinion that other principles of drawing election districts still apply, such as natural boundaries and historical boundaries, recognition of city limits, recognition of common interest of a population, and compactness. The plaintiffs' plan doesn't do that.

I don't have any evidence about the plan submitted by the Bossier school board, other than their lawyer, Mr.

Thornton, says it's fine. Under those circumstances, I cannot order the plaintiffs' plan into effect as an interim plan, and I don't have sufficient information about the defendant's plan to feel comfortable ordering it into effect. Under those circumstances, I will decline to order any plan into effect at this time.

If that seems rather odd, if it's important to have an election in East Carroll, why isn't it important to have an election in Bossier? Well, it is. But due to the haste of these proceedings, the election being scheduled so quickly, the court simply is not satisfied with any plan which has been presented to it, nor do I have sufficient information to feel comfortable in attempting to devise a plan of my own.

However, between now and the time we take the mattter up on the merits, I would expect that additional plans be proposed. I don't think you can get two majority black districts in the parish of Bossier without gerrymandering the districts. So, I would expect between now and the trial of this case on the merits both sides may well want to submit additional plans. And before the scheduled time for elections, in the spring of next year, we'll have a plan from the court, or Bossier school board will have a no objection blessing from the District Court in the District of Columbia.

Let me rephrase that so that everybody understands what I'm saying. We're going to have a plan for elections next spring, whether this court does it or the court in the District of Columbia does it. So, at this time the court declines to issue any injunction relative to the parish of Bossier.

If I need to, I'll make supplemental findings and conclusions.

I can't think of anything I haven't covered. If I've omitted something, somebody sound off. We only have these two left, don't we?

All right, court will be in recess. (Court recessed at 3:30 p.m.)

CERTIFICATE

I, the undersigned, do hereby certify that the above and foregoing is a true and correct transcription, to the best of my ability and understanding, of the official record of the proceedings.

/s/ KAY RABORN, C.C.R.
KAY RABORN, C.C.R.

Excerpts from Plaintiff's Exhibit 17 (Direct Testimony of Gary Dillard Joiner)

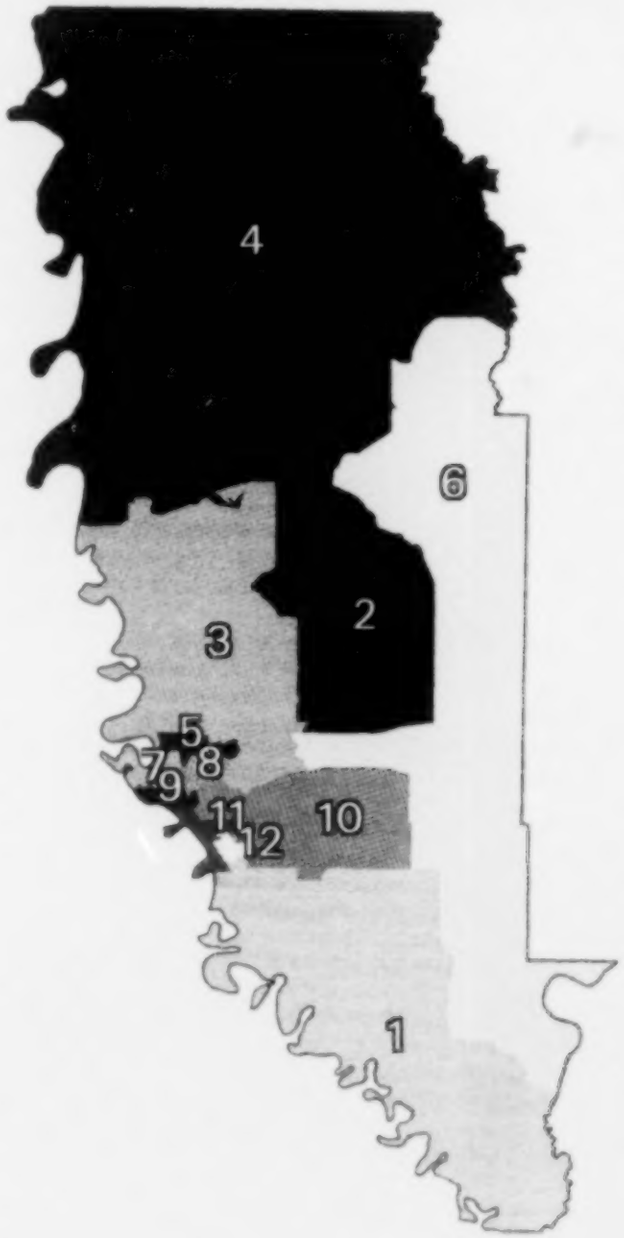
* * * *

[5]

I would like to explain the enormity of the problem faced by the members of the Bossier Parish School Board in attempting to create black majority districts in Bossier Parish. As I have previously mentioned, it was illegal for the members of the school board to cut or split existing precincts. The only possible way to create black majority districts is on a census block level as opposed to a precinct level. But since that can't be done, you have to look at making precinct cuts. When I attempted to create a black majority district within Bossier City the lowest number of cuts that I made was approximately fourteen (14). These precinct violations would have created fourteen new precincts inside Bossier City, primarily along the river. When I attempted then to add another black majority district to the north, the lowest combination of the two districts that I could come up with was something in the neighborhood of fifty-eight or sixty cuts. When I studied the original plan submitted by the NAACP which created two black majority districts, their plan had one hundred and sixty-two cuts. Each cut, and the creation of a new precinct requires a separate voting machine and a separate set of voting commissioners. This creates a serious additional cost factor for the voters of Bossier Parish, not to mention the confusion of the voter. To make matters worse for the members of the Bossier Parish School Board was the fact that Mr. James Bullers, the District Attorney of Bossier Parish and their legal counsel, advised them that they could not adopt a plan that cut or created new precincts.

BOSSIER PARISH, LA

Current School Board



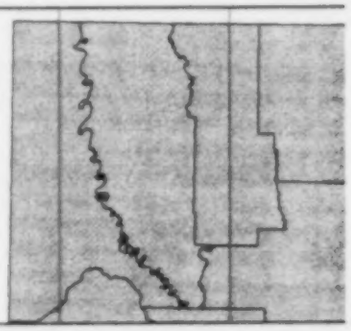
Library: Bossier Parish, LA

Plan: CURRENTSCHOOLBD

DISTRICTS

1
2
3
4
5
6
7
8
9
10
11
12

County boundaries



N

W E

S

Scale in Miles

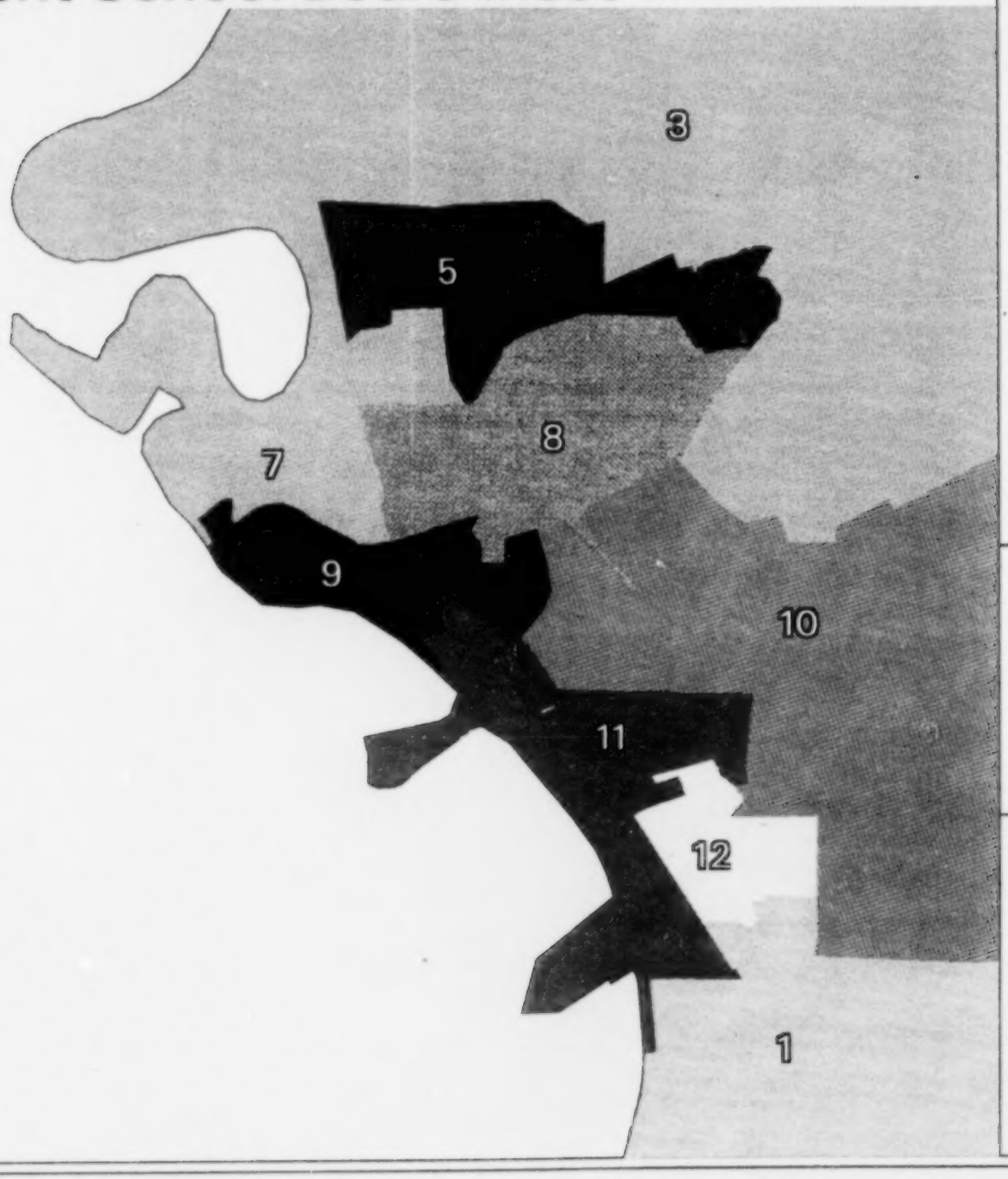
0 1 2 4 6

Prepared by:
United States Department of Justice
Washington, D.C., 20530

July 24, 1996

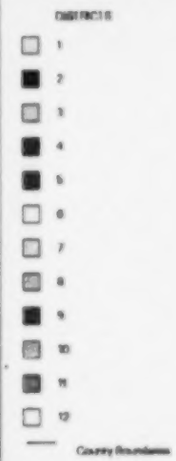
BOSSIER PARISH, LA

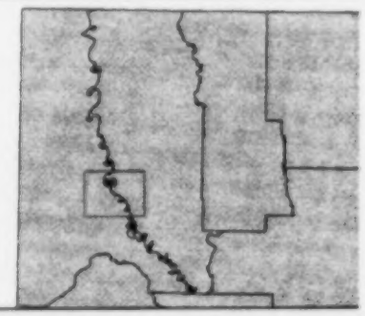
Current School Board Inset



Library: Bossier Parish, LA

Plan: CURRENTSCHOOLBD





Scale in Feet

0 1500 3000 4500

Prepared by:
United States Department of Justice
Washington, D.C., 20530

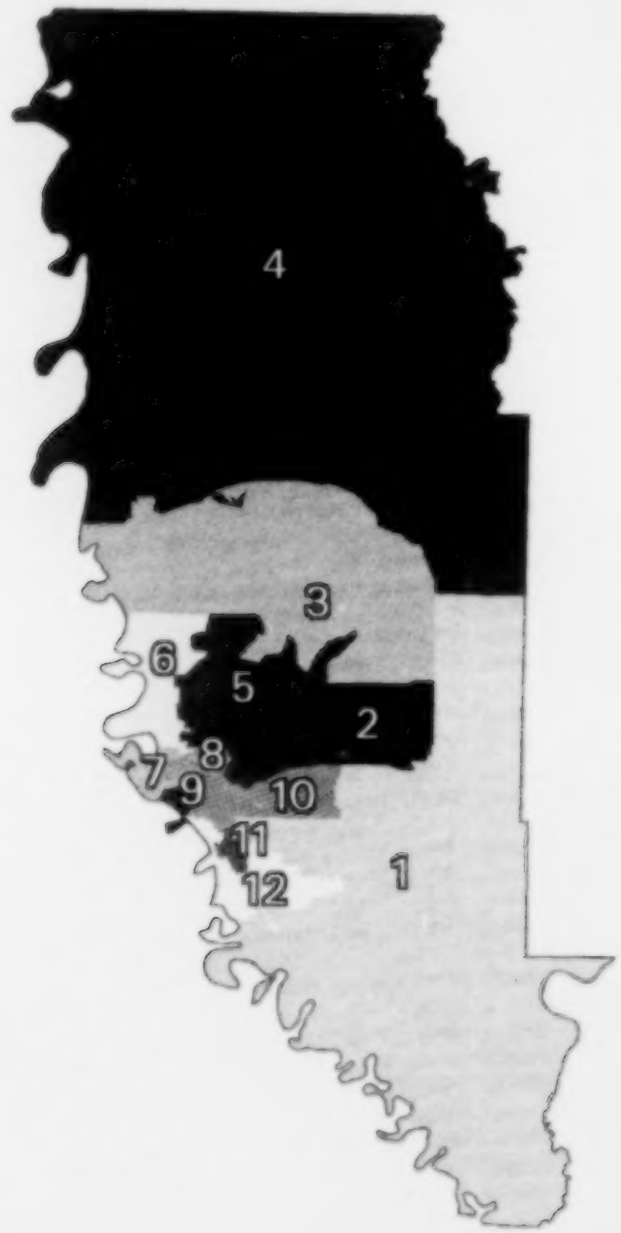
July 24, 1996

CURRENT SCHOOL BOARD PLAN

DIST.	TOTAL POP	TOTAL NON-HISPANIC WHITE	WHITE %	VOTING AGE NON-HISPANIC WHITE	WHITE %	TOTAL NON-HISPANIC BLACK	BLACK%	VOTING AGE NON-HISPANIC BLACK	BLACK%	TOTAL OTHER	OTHER%	VOTING AGE OTHER	OTHER %
1	9,233	7,667	83.0	5,312	84.3	1,225	13.3	759	12.0	341	3.7	233	3.7
2	7,889	6,446	81.7	4,457	83.1	1,289	16.3	803	15.0	154	2.0	105	2.0
3	13,598	11,764	86.5	8,347	87.2	1,490	11.0	998	10.4	344	2.5	232	2.4
4	6,552	3,431	52.4	2,614	56.7	3,044	46.5	1,941	42.1	77	1.2	53	1.2
5	6,498	5,313	81.8	3,937	85.3	956	14.7	507	11.0	229	3.5	172	3.7
6	7,963	6,253	78.5	4,553	79.9	1,579	19.8	1,059	18.6	131	1.6	89	1.6
7	5,867	3,156	53.8	2,458	60.5	2,559	43.6	1,500	36.9	152	2.6	103	2.5
8	6,516	4,987	76.5	3,854	80.0	1,140	17.5	692	14.4	389	6.0	272	5.6
9	6,229	4,610	74.0	3,612	79.3	1,364	21.9	759	16.7	255	4.1	184	4.0
10	6,054	3,867	63.9	2,757	65.6	1,811	29.9	1,192	28.4	376	6.2	251	6.0
11	4,085	3,428	83.9	2,630	86.9	458	11.2	257	8.5	199	4.9	141	4.7
12	5,604	4,890	87.3	3,599	88.4	386	6.9	259	6.4	328	5.9	213	5.2

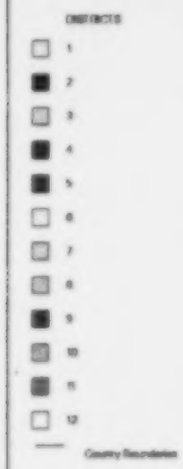
BOSSIER PARISH, LA

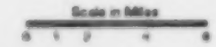
Proposed School Board



Library: Bossier Parish, LA

Plan: PROPOSEDSCHOOLBD





Prepared by:
United States Department of Justice
Washington, D.C., 20530

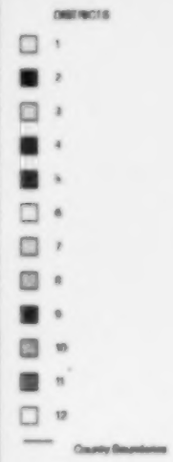
July 24, 1996

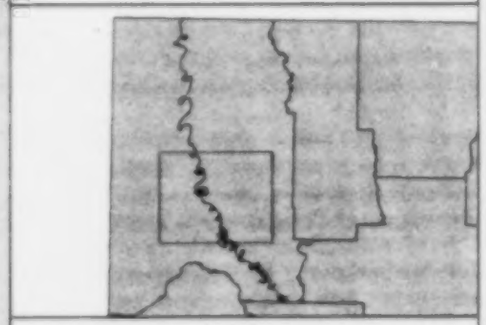
BOSSIER PARISH, LA

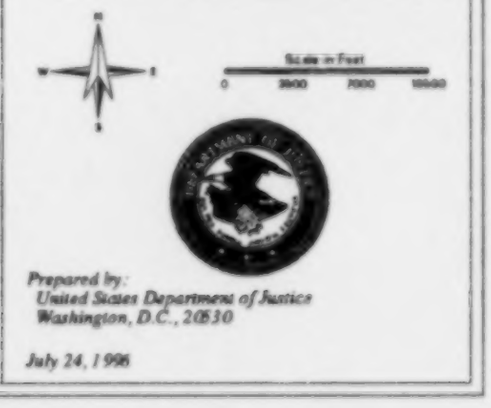
Proposed School Board Inset

Library: Bossier Parish, LA

Plan: PROPOSEDSCHOOLBD







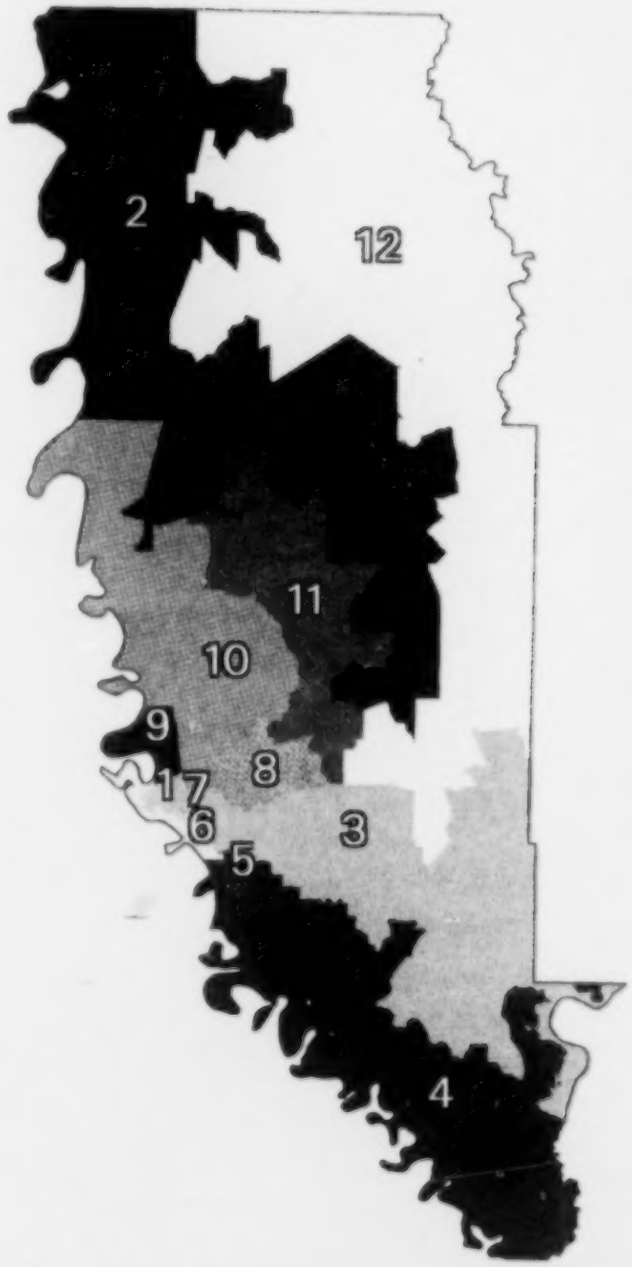
Prepared by:
United States Department of Justice
Washington, D.C., 20530

July 24, 1996

PROPOSED SCHOOL BOARD PLAN

DIST.	TOTAL POP	TOTAL NON-HISPANIC WHITE	WHITE %	VOTING AGE NON-HISPANIC WHITE	WHITE %	TOTAL NON-HISPANIC BLACK	BLACK %	VOTING AGE NON-HISPANIC BLACK	BLACK %	TOTAL OTHER	OTHER %	VOTING AGE OTHER	OTHER %
1	7,187	5,020	69.9	3,626	71.6	2,069	28.8	1,365	27.0	98	1.4	71	1.4
2	7,521	6,542	87.0	4,555	88.1	818	10.9	500	9.7	161	2.2	114	2.2
3	6,764	4,999	73.9	3,623	75.7	1,636	24.2	1,074	22.5	129	1.9	87	1.8
4	6,903	3,716	53.8	2,817	58.0	3,109	45.0	1,990	40.9	78	1.1	54	1.1
5	7,607	6,615	87.0	4,581	88.1	730	9.6	445	8.6	262	3.4	175	3.4
6	7,444	7,000	94.0	5,169	94.3	272	3.7	189	3.5	172	2.3	126	2.3
7	6,992	3,732	53.4	2,977	61.0	3,058	43.7	1,763	36.1	202	2.9	138	2.8
8	6,899	5,058	73.3	3,793	77.6	1,457	21.1	831	17.0	384	5.6	265	5.4
9	7,219	5,853	81.1	4,578	84.8	1,073	14.9	609	11.3	293	4.1	215	4.0
10	7,452	4,988	66.9	3,594	69.2	1,989	26.7	1,277	24.6	475	6.4	323	6.2
11	7,019	6,134	87.4	4,534	88.7	499	7.1	322	6.3	386	5.5	254	5.0
12	7,081	6,155	86.9	4,283	88.0	591	8.4	361	7.4	335	4.7	226	4.6

BOSSIER PARISH, LA
NAACP



Library: Bossier Parish, LA

Plan: NAACP

DISTRICTS

1
2
3
4
5
6
7
8
9
10
11
12

County Boundaries

Scale in Miles
0 1 2 4 6

Prepared by:
United States Department of Justice
Washington, D.C., 20530

July 24, 1996

BOSSIER PARISH, LA

NAACP Inset

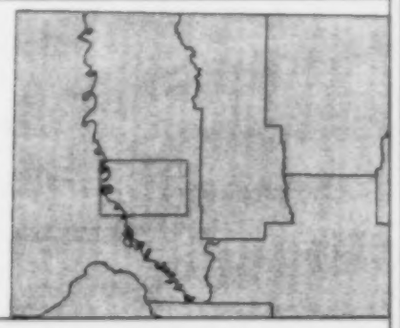
Library: Bossier Parish, LA

Plan: NAACP

DISTRICTS

1
2
3
4
5
6
7
8
9
10
11
12

County Boundaries



Scale in Feet

0 2500 5000 7500

Prepared by:
United States Department of Justice
Washington, D.C., 20530

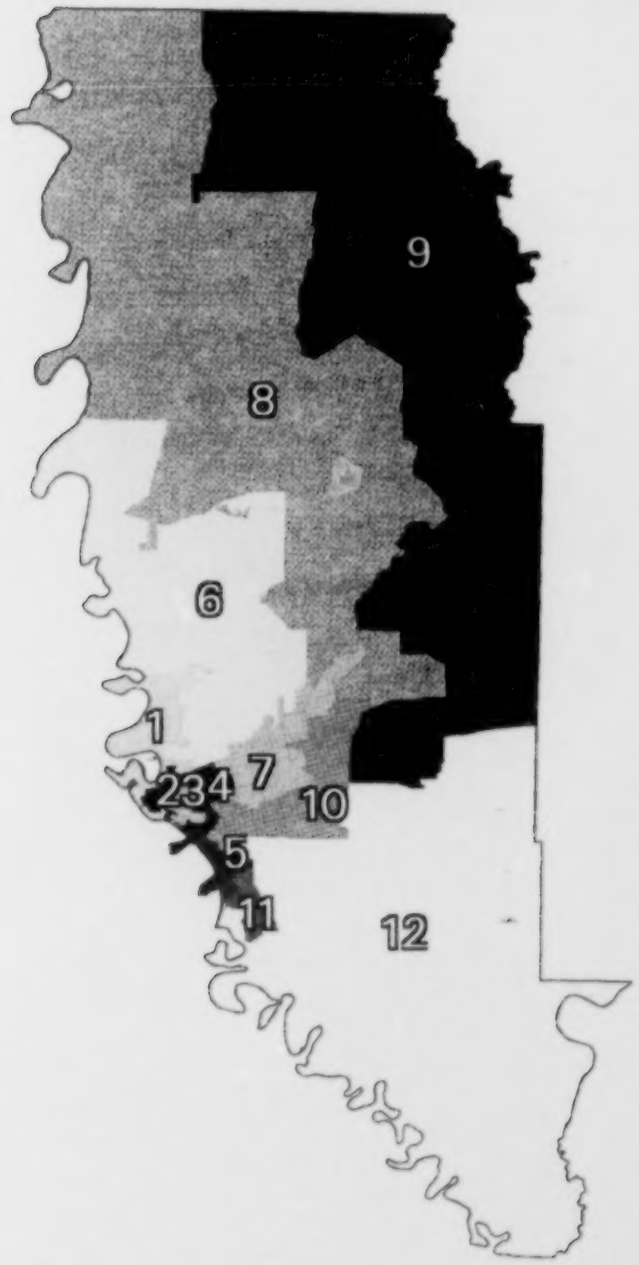
June 28, 1996

NAACP PLAN

DIST.	TOTAL POP	TOTAL NON-HISPANIC WHITE	TOTAL NON-HISPANIC WHITE %	VOTING AGE NON-HISPANIC WHITE	VOTING AGE NON-HISPANIC WHITE %	TOTAL NON-HISPANIC BLACK	TOTAL NON-HISPANIC BLACK %	VOTING AGE NON-HISPANIC BLACK	VOTING AGE NON-HISPANIC BLACK %	TOTAL OTHER	TOTAL OTHER %	VOTING AGE OTHER	VOTING AGE OTHER %
1	6,874	2,792	40.6	2,198	46.6	3,908	56.9	2,394	50.7	174	2.5	129	2.7
2	6,875	2,487	36.2	1,834	39.6	4,311	62.7	2,737	59.1	77	1.1	63	1.4
3	6,886	3,931	57.1	2,734	58.6	2,595	37.7	1,696	36.4	360	5.2	234	5.0
4	7,289	6,357	87.2	4,455	88.1	645	8.9	408	8.1	287	3.9	196	3.9
5	7,002	6,107	87.2	4,472	88.6	522	7.5	335	6.6	373	5.3	242	4.8
6	7,188	5,878	81.8	4,567	85.8	1000	13.9	540	10.1	310	4.3	218	4.1
7	6,823	5,966	87.4	4,716	89.4	555	8.1	337	6.4	302	4.4	223	4.2
8	7,457	6,167	82.7	4,278	84.8	950	12.7	539	10.7	340	4.6	227	4.5
9	7,427	6,676	89.9	4,942	91.9	584	7.9	309	5.8	167	2.3	126	2.3
10	7,414	6,011	81.1	4,435	83.3	1,116	15.1	702	13.2	287	3.9	187	3.5
11	7,395	6,700	90.6	4,581	91.2	514	7.0	324	6.5	181	2.5	121	2.4
12	7,458	6,740	90.4	4,918	91.0	601	8.1	405	7.5	117	1.6	82	1.5

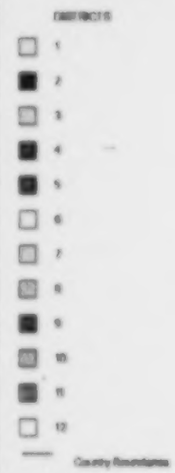
BOSSIER PARISH, LA

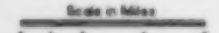
Cooper



Library: Bossier Parish, LA

Plan: COOPER



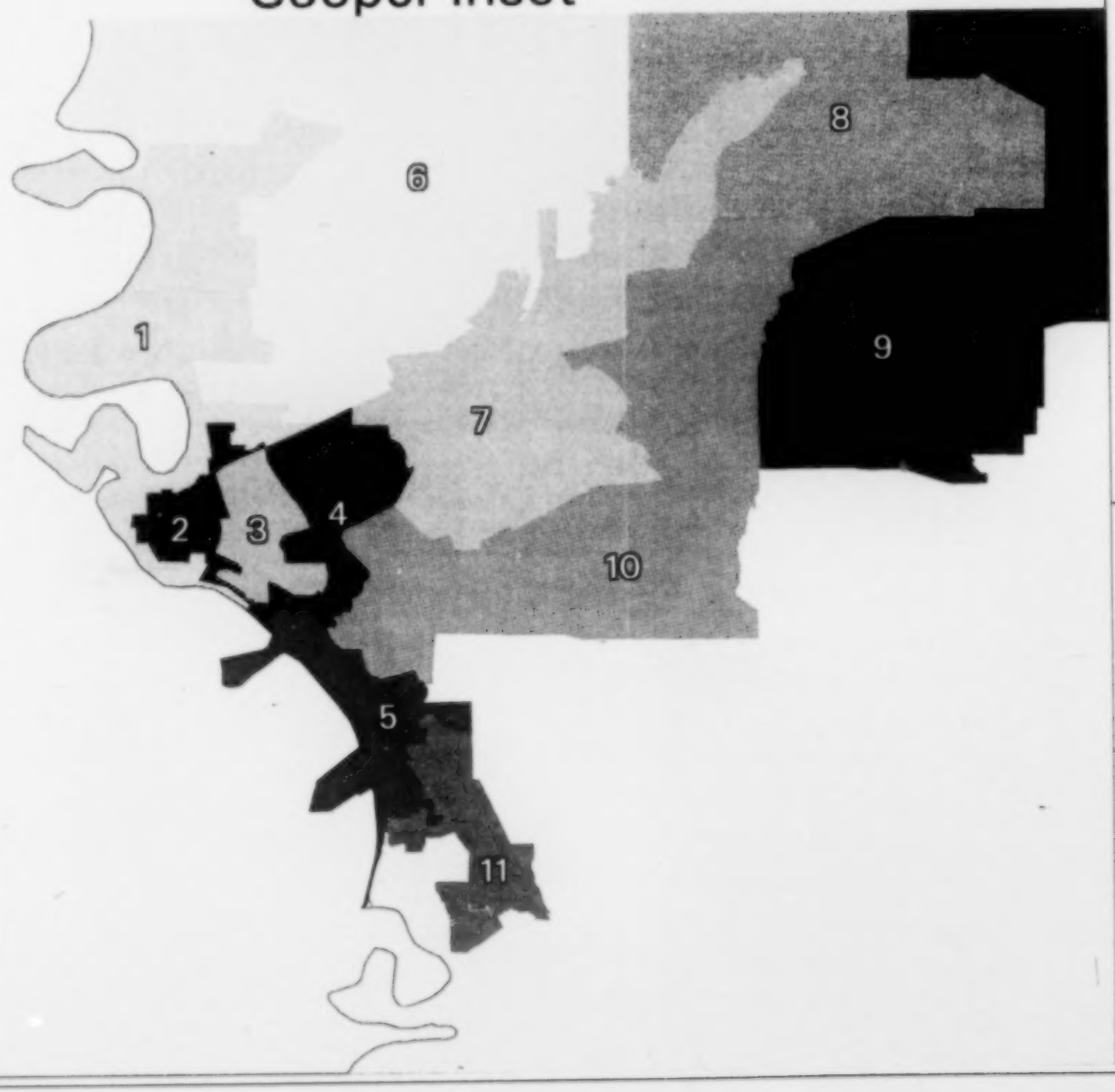


Prepared by:
United States Department of Justice
Washington, D.C., 20530

July 24, 1998

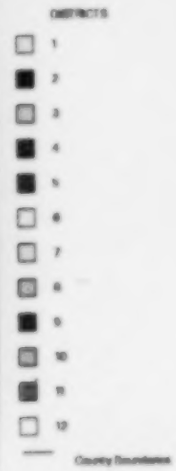
BOSSIER PARISH, LA

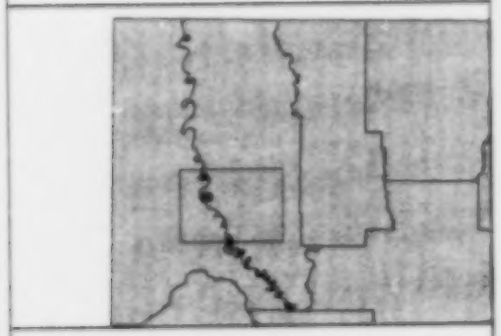
Cooper Inset

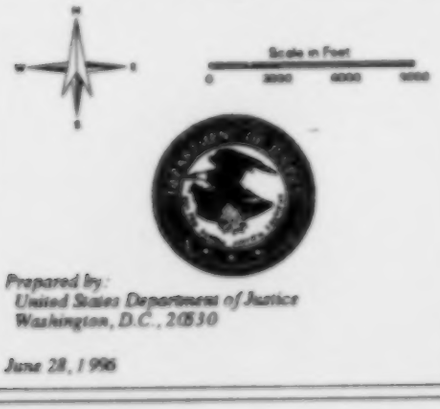


Library: Bossier Parish, LA

Plan: COOPER







Prepared by:
United States Department of Justice
Washington, D.C., 20530

June 28, 1996

COOPER PLAN

DIST.	TOTAL POP	TOTAL NON-HISPANIC WHITE	WHITE%	VOTING AGE NON-HISPANIC WHITE	WHITE%	TOTAL NON-HISPANIC BLACK	BLACK%	VOTING AGE NON-HISPANIC BLACK	BLACK%	TOTAL OTHER	OTHER%	VOTING AGE OTHER	OTHER%
1	6,840	6,271	92.0	4,603	92.8	393	5.8	235	4.7	176	2.6	125	2.6
2	6,840	2,543	37.2	1,975	43.8	4,135	60.5	2,427	53.8	162	2.4	106	2.4
3	7,057	5,756	81.6	4,574	84.7	1,021	14.5	622	11.5	280	4.0	207	3.8
4	7,043	5,409	76.8	4,031	80.4	1,223	17.4	692	13.8	411	5.8	294	5.9
5	7,475	6,524	87.3	4,937	88.7	548	7.3	359	6.5	403	5.4	271	4.9
6	6,886	6,267	91.0	4,702	91.4	454	6.6	327	6.4	165	2.4	114	2.2
7	7,473	6,391	85.5	4,382	86.9	792	10.6	468	9.3	290	3.9	196	3.9
8	6,839	2,750	40.2	2,010	43.6	4,012	58.7	2,543	55.2	77	1.1	59	1.3
9	7,496	6,448	86.0	4,681	87.2	927	12.4	604	11.3	121	1.6	85	1.6
10	7,335	5,794	79.0	3,983	79.9	1,127	15.4	734	14.7	414	5.6	267	5.4
11	7,399	6,423	86.8	4,509	88.0	602	8.2	359	7.0	374	5.0	257	5.0
12	7,405	5,236	70.7	3,743	72.5	2,067	27.9	1,356	26.3	102	1.4	67	1.3

BOSSIER PARISH ELECTIONS FEATURING BLACK CANDIDATES 1979-1993

The attached chart reflects virtually all elections in Bossier Parish during the period 1979 through 1993 for local offices featuring one or more black candidates, for which we have election returns. It does not include, however, elections for offices in the City of Shreveport as there is only one precinct in Bossier Parish (Precinct 2-23), which is located in Shreveport. This precinct represents only a small fraction of the city, the vast majority of which is located in Caddo Parish.

The abbreviation to the left of the dash in the "Dist." column denotes the jurisdiction, as follows:

B Benton

BC Bossier City

H Haughton

JDC Judicial District Court (the 26th JDC consists of Bossier Parish and Webster Parish; the data reported reflect the results of the election only in Bossier Parish)

PD Plain Dealing

PJ Bossier Parish Police Jury

SB Bossier Parish School Board

The abbreviation to the right of the dash in the "Dist." column denotes the office being filled and/or the district number (or letter) for the office, as follows:

A Board of Alderman

AL At Large position

C City Council

M Mayor

BOSSIER PARISH ELECTIONS FEATURING BLACK CANDIDATES 1979-1993

Election	*Dist.*	*% Black (Census)*	*Candidate(s)*	*Race*	*Vote (%)*
05/19/70 Sp. Pri.	BC-C2	39.4 (1980)	John Burnes	W	60 (12.2)
			Johnny Gipson	B	201 (40.9)
			Anthony Provenza	W	205 (41.7)
			J.G. Stahl	W	26 (5.3)
06/23/79 Sp. Gen.	BC-C2	39.4 (1980)	Johnny Gipson	B	324 (48.9)
			Anthony Provenza	W	339 (51.2)
10/27/79 Primary	PJ-J	42.7 (1980)	Johnny Gipson	B	459 (55.2)
			Thomas McDaniel (I)	W	373 (44.8)
04/05/80 Primary	B-A2	57.1 (1990)	Oscar Grubb	W	54 (48.2)
			Rutha Richardson	B	58 (51.8)
10/17/81 Primary	SB-C	28.1 (1980)	Floyd Coleman	B	389 (38.5)
			Annie Johnston	W	401 (39.7)
			Ken Larsen	W	150 (14.8)
			Nonnie Moak	W	71 (7.0)
11/28/81 Runoff	SB-C	28.1 (1980)	Floyd Coleman	B	584 (40.5)
			Annie Johnston	W	858 (59.5)
04/03/82 Primary	PD-A2	Data unavail.	Tommie Nance	B	Unopposed
10/22/83 Primary	PJ-7	29.3 (1980)	James Abrams	B	358 (22.1)
			Jerry Baker	W	385 (23.8)
			Pete Glorioso	W	875 (54.1)

BOSSIER PARISH ELECTIONS FEATURING BLACK CANDIDATES 1979-1993

Election	*Dist.*	*% Black (Census)*	*Candidate(s)*	*Race*	*Vote (%)*
10/22/83 Primary	PJ-10	37.9 (1980)	Jerome Darby	B	407 (33.0)
			Johnny Gipson (I)	B	260 (21.0)
			Thomas McDaniel	W	568 (46.0)
11/19/83 Runoff	PJ-10	37.9 (1980)	Jerome Darby	B	328 (53.2)
			Thomas McDaniel	W	289 (46.8)
04/07/84 Primary	B-A1	75.5 (1990)	J.C. Goines, Sr.	B	58 (46.8)
			Thelma Harry	B	66 (53.2)
04/07/84 Primary	B-A2	57.1 (1990)	Rutha L. Richardson	B	Unopposed
04/07/84 Primary	H-AAL	30.2 (1980)	James Bell (E)	B	396 (14.8)
			Curt Camp (D)	W	110 (4.1)
			Cashie Cole, Jr. (R)	B	237 (8.8)
			John Garland, Jr. (R)	W	213 (7.9)
			Thomas Hill (D)	W	200 (7.5)
			Conrad Isom (E)	W	357 (13.3)
			Mike Keith (E)	W	160 (5.7)
			Billy Joe Maxey (R)	W	230 (8.6)
			Johnny Ruffin (D)	B	211 (7.9)
			Shirley Stephens (E)	W	341 (12.7)
			M.H. Walker, Jr. (R)	W	228 (8.5)

BOSSIER PARISH ELECTIONS FEATURING BLACK CANDIDATES 1979-1993

Election	*Dist.*	*% Black (Census)*	*Candidate(s)*	*Race*	*Vote (%)*
05/05/84 Runoff	H-AAL	30.2 (1980)	Cashie Cole, Jr.	B	236 (41.0)
			John Garland, Jr.	W	96 (16.7)
			Billy Joe Maxey	W	133 (23.1)
			M.H. Walker, Jr	W	111 (19.3)
03/30/85 Primary	BC-C3	17.0 (1990)	Wanda Bennett	W	1,033 (82.8)
			Odis Easter	B	214 (17.2)
04/05/86 Sp. Pri.	B-A2	57.1 (1990)	Zella Mayfield	B	Unopposed
09/27/86 Primary	SB-J	30.1 (1990)	Jeff Darby	B	343 (45.7)
			Ruth Sullivan (I)	W	408 (54.3)
10/24/87 Primary	PJ-10	31.9 (1990)	Jerome Darby (I)	B	506 (60.5)
			Johnny Gipson	B	146 (17.4)
			Thomas McDaniel	W	185 (22.1)
10/1/88 Primary	JDC-26	20.1 (1990) Bossier Parish only	Dewey Burchett, Jr.	W	11,163 (64.3)
			Bobby Stromile	B	6,197 (35.7)
10/01/88 Primary	PJ-3		Jerry Chandler	W	449 (20.5)
			Larry Sharrah	W	523 (23.9)
			Marshall Smith	W	203 (9.3)
			Jessie Turks	B	0
			Don Whittington	W	1,014 (46.3)

BOSSIER PARISH ELECTIONS FEATURING BLACK CANDIDATES 1979-1993

Election	*Dist.*	*% Black (Census)*	*Candidate(s)*	*Race*	*Vote (%)*
10/1/88 Primary	H-M		Lurlene Butler	W	299 (49.3)
			Harold Lee	W	308 (50.7)
			R.G. Aldricht	W	273 (10.0)
			James Bell	B	362 (13.2)
			Cecil L. Blackstock	W	343 (12.5)
10/01/88 Primary	Benton Police Chief	41.3 (1990)	Raymond Champion	W	264 (39.2)
			J.W. Hollis	W	165 (24.5)
			Robert T. Smith	B	245 (36.4)
11/08/88 Runoff	Benton Police Chief	41.3 (1990)	Raymond Champion	W	467 (58.0)
			Robert T. Smith	B	338 (42.0)
04/01/89 Primary	BC-CAL	18.0 (1990)	Sonny DePrang (E)	W	4,750 (25.3)
			Jim Johnson (E)	W	7,168 (38.2)
			Randy Rowe (D)	W	4,619 (24.6)
			Don Rushing (D)	B	2,222(11.8)
04/01/89 Primary	BC-C4	18.9 (1990)	Bill Schwartz	W	922 (49.8)
			Earl Smith	B	137 (7.4)
			Billy Williams	W	791 (42.8)
04/01/89 Primary	BC-C2	25.6 (1990)	Donald Brown	W	449 (42.0)
			Jeff Darby	B	356 (33.3)
			Anthony Provenza (I)	W	265 (24.8)

BOSSIER PARISH ELECTIONS FEATURING BLACK CANDIDATES 1979-1993

Election	*Dist.*	*% Black (Census)*	*Candidate(s)*	*Race*	*Vote (%)*
04/29/89 Runoff	BC-C2	25.6 (1990)	Donald Brown	W	595 (48.5)
			Jeff Darby	B	631 (51.5)
10/06/90 Primary	SB-J	30.1 (1990)	Johnny Gipson	B	430 (46.8)
			Ruth Sullivan (I)	W	489 (53.2)
10/19/91 Primary	PJ-7	43.9 (1990)	Pete Glorioso (I)	W	1,099 (64.5)
			Leonard Kelly	B	604 (35.5)
10/19/91 Primary	PJ-10	26.9 (1990)	Jerome Darby (I)	B	Unopposed
10/19/91 Primary	H-M	27.9 (1990)	Cecil Blackstock (I)	W	458 (73.6)
			Mark Hill	B	67 (10.8)
			George Hunter	W	97 (15.6)
03/10/92	B-M	41.3 (1990)	Thelma Harry	B	218 (36.2)
			Joe Stickell	W	378 (62.8)
			Ronny Vaughn	W	6 (1.0)
10/03/92	H-AAL	27.9 (1990)	Pee Wee Anderson	W	294 (15.9)
			Cashie Cole, Jr. (I)	B	256 (13.9)
			Jack Hicks	W	323 (17.5)
			Mike Hollis	W	264 (14.3)
			Frank Jones	W	158 (8.6)
			Billy Joe Maxey	W	288 (15.6)
			Elbert Winfield	B	263 (14.3)

BOSSIER PARISH ELECTIONS FEATURING BLACK CANDIDATES 1979-1993

Election	*Dist.*	*% Black (Census)*	*Candidate(s)*	*Race*	*Vote (%)*
04/03/93 Special	SB-K	11.3 (1990)	Jerome Blunt (I)	B	93 (23.9)
			Juanita S. Jackson	W	296 (76.1)
10/16/93 Special	BC-C1	7.5 (1990)	Donald Ardoyno	W	436 (29.8)
			Gordon Blackman	W	881 (60.1)
			Will Jones	B	148 (10.1)
10/16/93 Special	BC-C2	42.2 (1990)	Jeff Darby (I)	B	416 (46.7)
			"Jim" Sawyer	W	474 (53.3)

CHRONOLOGY OF EVENTS

11/19/83 Jerome Darby elected to Police Jury.

11/13/90 Police Jury hires Gary Joiner to develop redistricting plan.

12/6/90 Police Jury Finance Committee appoints Technical Advisory Reapportionment Committee to work with Joiner on redistricting; Jerome Darby not included on the Reapportionment Committee.

12/11/90 Darby protests exclusion from Committee as a denial of "equal representation"; Police Jury votes to appoint him and white Juror James Elkins on Committee.

1/15/91 Police Jury passes over Jerome Darby for Presidency of Police Jury.

1/15/91 to 4/9/91 Joiner meets privately in his office with groups of 2 or 3 Police Jurors to discuss district configurations in their area. School Board member Thomas Myrick attends some of these meetings; meets with Joiner approximately five times.

4/1/91 to 5/15/91 Statutory "window" under Louisiana law for Police Juries to subdivide election precincts for redistricting purposes.

4/9/91 Public Police Jury redistricting hearing. Joiner presents 3 proposed plans, states that precinct splitting would be allowed through 5/15/91.

4/25/91 Public Police Jury redistricting hearing. Black residents ask questions regarding

black-majority district; are told that black population is too scattered to allow black district. Police Jury votes to pursue Joiner's Plan 9 for final adoption at next meeting.

4/30/91 Public Police Jury redistricting hearing. Joiner states that precinct changes could be made after 1/1/93 so as to consolidate precincts and reduce administrative election costs. Police Jury adopts Plan 9 as final plan. Concerned Citizens present letter to Police Jury complaining about redistricting process.

5/2/91 Joiner attends School Board meeting; is hired by School Board; estimates 200-250 hours to complete redistricting. Joiner states that School Board has more than adequate time to draw districts since the next School Board election is not until 1994.

5/14/91 Jerome Darby discusses Concerned Citizens letter at Police Jury meeting.

5/28/91 Police Jury submits Police Jury Plan to Department of Justice.

7/29/91 Department of Justice preclears Police Jury plan.

9/5/91 First School Board meeting at which redistricting discussed in substance. Joiner distributes precinct maps; states that School Board would have to work with Police Jury to alter precinct lines if it favored a plan which split precincts. Myrick immediately suggests adoption of Police Jury Plan.

3/25/92 NAACP representative George Price writes letter to Superintendent Lewis requesting that NAACP be included in all phases of redistricting process; letter distributed to School Board members. No action taken on letter.

7/22/92 *Hays* v. *Louisiana (Hays* I) filed in federal district court.

Sometime in 8/92 Joiner meets privately with School Board members, demonstrating redistricting computer and showing alternative redistricting scenarios. NAACP not notified of meeting.

8/7/92 District court in *Shaw* v. *Barr* dismisses plaintiffs' 14th Amendment gerrymandering claim as failing to state a cause of action.

8/17/92 Price writes second letter to Lewis, requesting that NAACP be allowed to come before the School Board to present their views on redistricting, and stating opposition to PJ Plan or any other plan diluting minority voting strength.

8/20/92 Price presentation at School Board meeting re: various concerns, including appointment of a black School Board member to fill an existing vacancy, and participation of all parish citizens in redistricting. No specific action is taken by School Board on these requests.

Between 8/25/92 and 8/27/92 Price presents NAACP map of 2 illustrative black-majority districts to school and district official, who rejects plan because it does not contain a full 12 districts.

8/26 - 8/27/92	Preliminary injunction hearing in *Hays* v. *Louisiana (Hays I)* in federal district court.
8/27/92	District court in *Hays I* denies plaintiffs' motion for preliminary injunction, dismisses plaintiffs' constitutional claims, allows briefing on Section 2 vote dilution claims only.
9/3/92	Price presents full, 12-district NAACP Plan at School Board meeting. Joiner and School Board members summarily dismiss NAACP Plan because it crosses existing precinct lines.
9/10/92	Jerome Blunt appointed as first black School Board member in Bossier Parish history by a 6-5 vote at a special School Board meeting.
9/17/92	Jerome Blunt sworn in as member of School Board. At same School Board meeting, Price again presents NAACP Plan on behalf of the NAACP, Concerned Citizens of Bossier Parish, Men's Club of Bossier, Voter's League, Bossier Housing Tenant Coalition and Concerned Parents of Plain Dealing. School Board unanimously passes a motion of intent to adopt the Police Jury Plan, schedules 9/24/92 public hearing and 10/1/92 meeting for final action.
9/24/92	School Board hearing on redistricting held with full-capacity crowd. Price presents petition with over 500 signatures, urges consideration of NAACP Plan as a foundation for the creation of a plan with black-majority districts.
10/1/92	At School Board meeting, School Board adopts Police Jury Plan 10-1-1, Jerome Blunt abstaining (one member absent).

12/31/92	Date under Louisiana law by which school boards must reapportion.
1/1/93	Date under Louisiana law after which parishes could reconsolidate their precincts.
1/4/93	School Board submits plan adopted by Police Jury ("Proposed School Board Plan") to Department of Justice.
1/26/93	"Community Affairs Committee," formed at request of black community, holds its first meeting to discuss School Board matters.
3/5/93	Department of Justice asks School Board for more information re: redistricting plan.
3/16/93	School Board disbands Community Affairs Committee.
6/29/93	Supreme Court issues opinion in *Shaw* v. *Reno*.
8/19 - 8/29/93	Supplemental evidentiary hearing in *Hays* v. *Louisiana (Hays I)*.
8/30/93	Department of Justice objects to School Board's Proposed Plan. Objection letter points out the School Board's option of asking the Police Jury to change precinct lines to allow drawing of black-majority districts.
8/31/93	Copies of Department of Justice objection letter provided to all School Board members.
9/2/93	In executive session at School Board meeting, School Board discusses its options in light of Department of Justice objection. No discussion of attempting to draw black-majority districts occurs. In public, School Board unanimously votes to seek reconsideration from Department of Justice.

9/3/93 School Board seeks reconsideration of objection in letter to Department of Justice.

9/16/93 Price presentation at School Board meeting on behalf of coalition of black organizations asking School Board to reconsider its decision to seek withdrawal of objection. School Board does not respond to Price's suggestion.

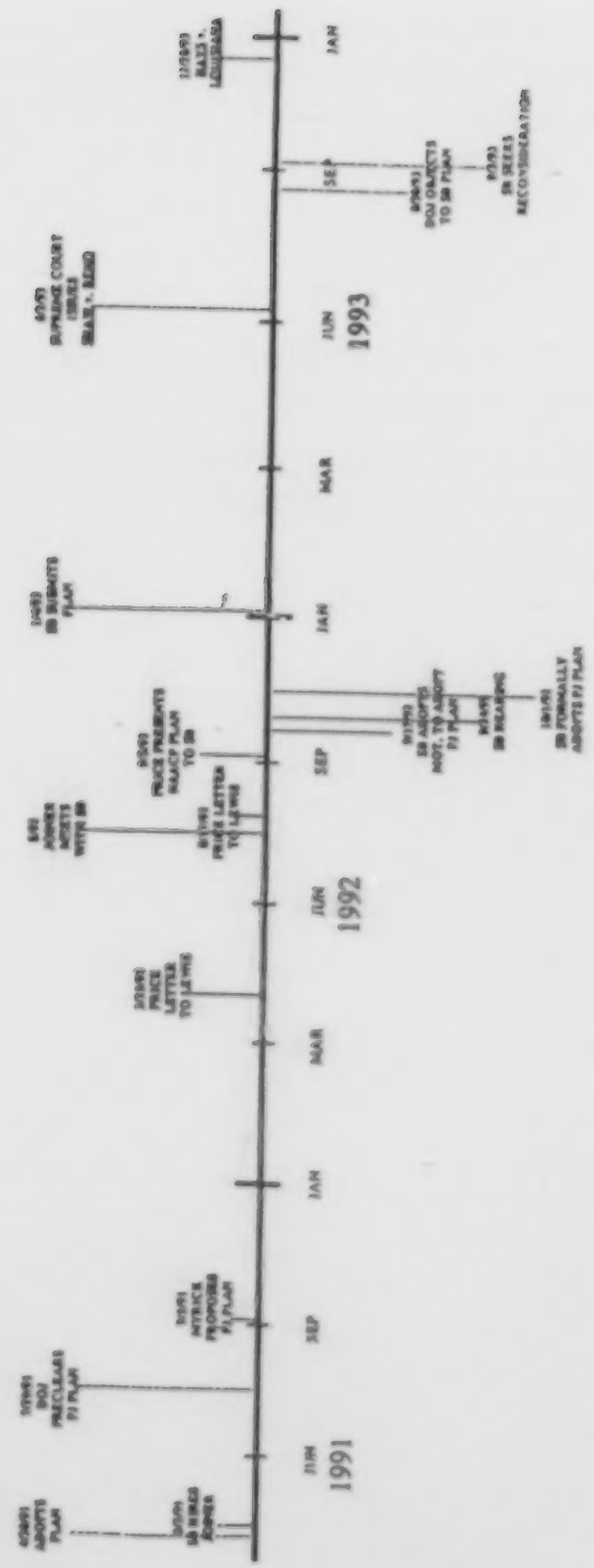
12/20/93 Department of Justice declines to withdraw objection.

12/28/93 LA district court issues decision in *Hays* v. *Louisiana*.

1/11/94 Police Jury resolves not to redraw its redistricting plan.

7/8/94 School Board files *Bossier Parish School Board* v. *Reno*.

CHRONOLOGY OF EVENTS



BEST AVAILABLE COPY

Excerpts from U.S. Exhibit 86 (Designations of portions of Deposition of School Board Member Susan J. Barrera dated September 30, 1994)

* * * *

[60]

* * * *

Q. Why does Bossier Parish still have schools with predominantly black student enrollment?

A. Because those people have not moved into predominantly white neighborhoods.

Excerpts from U.S. Exhibit 87 (Designations of portions of Deposition of School Board Member Barbara Blaylock dated October 6, 1994)

* * * *

[97]

* * * *

Q. Why does Bossier Parish have predominantly black schools?

A. Have predominantly black? Probably because of just the area in which they are.

Excerpts from U.S. Exhibit 90 (Designations of portions of Deposition of School Board Member Henry Burns dated October 6, 1994)

* * * *

[119]

* * * *

Q. Why does the Bossier Parish school district have schools with predominantly black student enrollment?

A. Why do Bossier Parish schools have schools that have predominantly black enrollment? Well, I am only, like, high schools or elementary schools.

Q. Well, for example, Butler Elementary School. Why, in your view, is Butler Elementary School a predominantly—first of all, are you aware that the district has schools that are —

A. Yes, like Plain Dealing and brand Bossier High. I am pretty well familiar with the percentages at most of the schools, but I think the neighborhood school concept.

* * * *

[120]

* * * *

Q. And Butler Elementary School and Bossier Elementary School are also near one another; isn't that true, are physically near one another?

A. Yes.

Q. What about Plain Dealing High School and Plain Dealing Elementary School is that the same?

A. Yes. They are located in the northern, you know, rural part of the parish.

Q. I take it their predominantly black student enrollment, in your view, is due to the demographic makeup of the area of their attendance boundaries?

A. Yes.

Excerpts from U.S. Exhibit 93 (Designations of portions of Deposition of School Board Member Barbara Gray dated September 19, 1994)

* * * *

[68]

* * * *

Q. When you were talking about the two areas where you thought it would be possible, if you sat aside concerns about splitting precincts to conceivably draw a black majority district, you mentioned the Plain Dealing area and you also mentioned district G, Ms. Sullivan's district, when you talk about District G, are you talking about District G in the current plan as opposed to the proposed plan?

A. The current plan that we have, that is what I am referring to.

Q. Let me hand you what I have marked as School Board Exhibit Eleven and let me just ask you, is that the old plan from the 1980s, the one that current school board members are sitting under?

A. Yes.

Q. On that document, is that the District G that you are talking about?

A. Yes. Wait a minute, let me see. No. No. District J is the one. And possibly G, but I would say J over G first. I got G and J confused and I am sorry.

Q. Both of those districts are in the Bossier City area?

A. Right.

Q. And District G is the district that contains or is quite near Bossier Elementary and Butler Elementary?

A. Yes.

Q. Which are both predominantly black elementary school, right?

A. Yes.

* * * *

[71]

* * * *

Q. And, isn't it a fact that today Butler is a predominantly a black school?

A. It may be. Yes.

Q. And isn't it a fact that when you joined the board —?

A. That is not—that is just because that is where they happen to live.

Q. And I guess that the same would be true for Bossier elementary school, which is even more predominantly black?

A. That happens to be, I guess, where they have their population that feeds the school.

Excerpts from U.S. Exhibit 95 (Designations of portions of Deposition of School Board Member Juanita Jackson dated September 29, 1994)

* * * *

[36]

* * * *

Q. Why does the school district still have predominantly black schools?

A. Our attendance lines determine where a person would go to school and if the area surrounding that school is predominantly black, that is where they would go to school.

Q. Where are those areas that are predominantly black?

A. Plain Dealing. And I do not if there are any others that are predominantly black.

Q. Are you aware that Bossier Elementary School is predominantly black attendance?

A. I know that we do have blacks and whites attending there, but I do not know what the racial makeup is.

Q. Are you aware that Butler elementary school is also predominantly black?

A. Because of the location of those schools, if the area surrounding them is predominantly black, then they would be predominantly black, but I really do not know.

Q. They are in the Bossier City area; is that correct?

A. Yes.

Q. And they are [near] one another?

A. Yes, they are.

* * * *

Excerpts from U.S. Exhibit 97 (Designations of portions of Deposition of School Board Member David L. Harvey dated September 30, 1994)

* * * *

[62]

* * * *

Q. Are you aware of what the district's obligations are under the consent decree?

A. No. I am not familiar with it.

Q. Why is it that the Bossier Parish school district has predominantly black schools?

A. Predominantly black schools.

Q. Yes. Schools with predominantly black student enrollment?

A. I would suppose it has to do with the fact that our schools are set up on what I would regard as the neighborhood school concept. Children attend school at a school near their home. I do not know, historically back years ago when busing was a real hot issue in many parts of the country, at that point, I was not involved in school board activities. I do not even remember if I had any children at that time. I do not know if busing was an issue here to get children moved around for purposes of racial balance or anything like that. It is just, ever since I have been a resident of Bossier Parish, we have more or less, and I am using my own term, my operated on the basis of a neighborhood school concept.

Q. If Butler Elementary School and Bossier Elementary School were both predominantly black schools, it would be largely because they are in black neighborhoods?

A. I would suspect so, yes.

Q. Why is it in your view that Plain Dealing Elementary and Plain Dealing High School are predominantly black?

A. Those schools are located in rural parts of the parish and, I believe would more than likely be populated by predominantly black families. It seems to make sense to me.

Excerpts from U.S. Exhibit 98 (Designations of portions of Deposition of School Board Member Boyce Hensley dated September 30, 1994)

* * * *

[73]

* * * *

Q. Why does the Bossier Parish public school system have predominantly black schools today?

A. Because of the location of the school and the community concept.

Q. So, Bullers Elementary School and Bossier Elementary School are predominantly black schools because they are in predominantly black neighborhoods?

A. That is correct.

Q. And, in fact, they are contiguous, their attendance zones are very near one another, those two schools?

A. Yes, sir.

Q. Similarly Plain Dealing Elementary School and Plain Dealing High School are predominantly black in your view, for what reason?

A. Because the people that live in that area, the neighborhood system there, the percentage is higher with black than it is in the Airline district.

Excerpts from U.S. Exhibit 99 (Designations of portions of Deposition of School Board Member Marguerite Hudson dated September 29, 1994)

* * * *

[13]

* * * *

Q. Do you know what the percent of— the black percentage student enrollment is in the public schools in Bossier Parish?

A. No, but I could know. It is certainly not anything like what Caddo has. It is around—I [14] don't know. I would rather not guess on the record. I have an idea though.

Q. What is your idea?

A. Well, it is not 20 percent. I don't believe it is 20 percent.

Q. Is it more or less?

A. Less.

Q. Less than 20 percent black students?

A. Yes. But that's—I really don't like to go on the record with being that vague.

Q. What is the minority student enrollment in Caddo Parish? Approximately?

A. It is more than 50 percent. It is about 60/40, I believe. This is common understanding. I am not sure that it is valid figures.

Q. Does that make a difference between the two parishes and the school system?

A. Their ratio as contrasted to our ratio?

Q. Yes.

A. It does.

Q. And what is the difference?

A. You are asking me, "Does it make a difference?"

Q. Yes.

A. And it makes a difference in that some [15] people from Caddo, a good many people have moved to Bossier Parish, in order to get to a school system which has a higher white ratio to blacks. That is one of the reasons that the parish, Bossier Parish is increasing in population, as much as it is. That is just about it.

* * * *

[85]

* * * *

Q. Why is it that the Bossier Parish has predominately black schools, in 1994?

A. Well, the black children's parents do not have cars to transport them to white schools.

Q. So the District doesn't provide transportation for a majority/minority plan?

A. We would. We do. We have that written into our policy. And we would. They do not want to go to a majority white, they want to stay right with their own. They know that they can go to a majority white. They want to stay right with their own.

They know that they can go from majority to minority, I mean, from minority to majority, and we would give them transportation. They can get a—

Q. So why are there predominately black schools?

[86]

A. They like to go to school with their community.

Q. So it is a question of residential area, that are predominately black?

A. Right. Right. It is fiction that they want to go out there, and be with some people that they are not like.

Q. So,—

A. —you just go into one of these schools, and just ask them.

Q. So, Butler Elementary School, and Bossier Elementary School, are predominately black schools in your view, because they are in predominately Black neighborhood in Bossier City?

A. Certainly. Certainly.

Q. And the new one, that is?

A. Right. I believe our policy says that they would have to, I don't know about the transportation. I would need to look at the written policy.

Q. What about Plain Dealing Elementary, and Plain Dealing High School, those are also predominately Black schools, aren't they?

A. What about it?

Q. They are predominately Black schools.

[87]

A. What do you want me to say about it?

Q. Yes, or no?

Q. Oh, they are. And those people love to live Plain Dealing. They love to live up there.

Q. Okay.

A. And most of them don't want to get a big job, they would just rather stay out there in the country, and stay on Welfare, and stay in Plain Dealing.

* * * *

[96]

* * * *

Q. Okay. Would you say—are you familiar at all with Bossier City?

A. Oh, indeed.

Q. Okay. Would you say that there are indeed, [9] communities within the city of Bossier City?

A. Well, there are two, basically, Black communities, within the city, wherein, you probably could, if you could get away from this precinct business, you could come up with some kind of district, Black district. Old Bossier, and Northgate, as I call it.

Q. Yes.

A. Northgate is this over here by Barksdale, on the North end of Barksdale, and that is where a person, who—

Q. Excuse me. Could you show me where old Bossier is on that map?

A. Down in here.

Q. Let the record reflect that the witness is pointing to the left central portion of the City of Bossier.

A. And it would make a lot of sense because you have Butler, and Bossier, Bossier Elementary,

Excerpts from U.S. Exhibit 100 (Designations of portions of Deposition of School Board Member Michelle Rodgers dated September 30, 1994)

* * * *

[14]

* * * *

Q. Where is the black population in Bossier Parish?

A. Well, there is quite a bit around Plain Dealing. There is quite a bit in my district.

Q. Where, specifically, in your district?

A. In the area around Butler Elementary. And Bossier Elementary.

Q. Could you describe that in terms of the city?

A. In terms of the city, Scott Street, Green Street, those areas of Old Bossier.

Q. So, Old Bossier is in your district?

A. Yes. There is another large area of blacks in [15] Ms. Sullivan's district. They refer to that as Jack's quarters.

Q. That is in the city of Bossier?

A. Yes.

* * * *

[100]

* * * *

Q. Why is it that the Bossier Parish school district has predominantly black schools? Why is it that the Bossier Parish school district has predominantly black schools?

A. I can only think of two in the parish that would be predominantly black.

Q. What are those?

A. Butler Elementary, which is in my district. And probably Plain Dealing would be predominantly black.

Q. Why are those schools predominantly black?

A. I would assume that Plain Dealing, well, first of all, Plain Dealing has a private school, Plain Dealing Academy and a lot of kids in that area go to that private school. There are also a lot of black people who live in that area. Mr. Myrick could better answer that since he is more familiar with the Plain Dealing area.

Butler Elementary is in the opposite section of my district. I do not live very close to there, but there are black neighborhoods [101] surrounding that school.

Q. Why is Bossier Elementary a predominantly black school?

A. Well, it is geographically very close to Butler Elementary.

Q. Why is Plantation Park Elementary School a predominantly black school?

A. There is a housing project down the street from Plantation Park, which I believe is predominantly black.

Excerpts from U.S. Exhibit 101 (Designations of portions of Deposition of School Board Member Ruth Sullivan dated September 29, 1994)

* * * *

[83]

* * * *

Q. Why do you still have predominantly black schools in the Bossier Parish school district?

A. One is because Butler, when we tried to move, get an equal, move those kids from Butler, the people rose up in arms and said, "We want our neighborhood school," and we did everything that we could to make sure that they had their neighborhood school. And, Butler is one of our predominantly black schools.

Q. Butler is in a black neighborhood, that is why it is a predominantly black school?

A. Yes.

Q. What about Bossier Elementary School?

A. Same difference.

* * * *

Excerpts from U.S. Exhibit 96 (Designations of portions of Deposition of Bossier Parish Registrar of Voters William Johnston dated October 12, 1994)

* * * *

[10]

* * * *

Q. Okay. You change and realign precinct boundaries even separate and apart from reapportionment, correct?

A. We do, yes.

Q. How—about how often do you do that?

A. Oh, three or four years, every three or four years.

* * * *

Q. When you do the precinct realignments you can take a large precinct and split it into two—that might be one thing you could do, correct?

A. You could.

Q. Another thing you might do is take two smaller precincts combine them into one, correct?

A. You could.

Q. That's called a precinct consolidation?

A. Uh-huh. (Affirmative)

Q. And you could actually split a large precinct into more than two if you wanted to, correct?

A. Well, it depends on a lot of—on certain situations.

Q. Okay. Tell me about that.

A. Well, it depends if it's inside the city limits or outside the city limits. In other words, the precinct has to

be wholly within or without the city limits. In other words, you can't take a precinct and have part of it in and part of it outside the city limits.

Q. So you couldn't consolidate a precinct outside the city limits with one that's inside the city limits?

A. No.

Q. But you could consolidate two precincts that were inside the city limits together?

A. We could if it was approved by the Justice Department.

Q. And you could consolidate—two precincts that were outside the city limits you could consolidate them together?

A. If it was approved by Justice Department.

Excerpts from U.S. Exhibit 102 (Direct Testimony of former School Board Member Jerome Blunt dated April 10, 1995)

* * * *

[3]

* * * *

5. I wanted to serve on the school board for the same reasons that I served on other policy making bodies. I was concerned as a parent about what my children were being taught. I enjoy being on the policy making end of things and felt that with my background as a parent and my work in special education, I could make a significant contribution to the school district.

6. I also felt that it was important to have minority representation on the school board. Blacks in Bossier Parish do not feel a part of the school system. They feel that, because they do not have representation on the board, they do not have a voice in the decision making and that they are unable to bring about change in the school system. Minority groups, such as the NAACP and the Bossier Concerned Citizens Association, have worked [4] together and presented their issues as a coalition in an attempt to bring to the attention of the school board that the concerns of the black community are not isolated incidents, but real concerns of blacks throughout the parish. The black community's feelings that the school board does not take their concerns seriously are justified because the school board has not been responsive to the concerns raised by the coalition. The most recent example of this lack of responsiveness that I can think of is the board's reluctance to provide the minority coalition with information they had requested relating to the disparities in graduation rates or suspension and expulsion rates between white students and

black students. Some of the members of the board are convinced that Mr. Price, president of the local chapter of the NAACP and spokesperson for the minority coalition, is only interested in information like this so that he can use it against the school board. Because of this attitude, they miss the fact that the members of the minority coalition are genuinely interested and concerned about our young people and request information like this so that they can better understand the problems facing our black school children. They wish to work with the school system to develop policies aimed at addressing the needs of black students.

* * * *

[5]

* * * *

8. I took the oath of office as a school board member on September 17, 1992, at the end of the board's redistricting process. At the same meeting, the NAACP presented, for a second time, a map of a redistricting plan for the Bossier Parish School Board that created two black-majority districts. The board did not take the NAACP plan seriously and never gave the plan any serious attention. School board member Boyce Hensley called the plan "ridiculous." School board member Ruth Sullivan, in response to the idea of creating black-majority districts to provide an opportunity for elected black representation on the board, remarked that she could represent blacks as well as a black could.

9. It was my impression, by the time I took office, that the members of the board had already decided informally to adopt the police jury plan, which had no black-majority districts. In fact, at the September 17, 1992 school board meeting, the board passed a motion of intent to adopt the police jury plan and adopted the plan at the next board meeting on October 1, 1992.

[6]

10. In between the September 17 and the October 1 meetings of the school board, I participated in discussions with other school board members regarding the merits of the police jury plan and the NAACP plan. In particular, I recall a discussion at the September 24, 1992, public hearing on the plan about the opposition to the police jury plan presented by Mr. George Price on behalf of the minority coalition. Mr. Price stated that he had consulted with the national chapter of the NAACP and that their lawyers agreed that the police jury plan violated the Voting Rights Act because it did not fairly represent minority voting strength. Price further stated that the board's concerns about the splitting of precincts in violation of state law was superseded by the necessity to comply with federal law. I thought that Mr. Price's presentation raised some concerns that the board needed to address, but there was no further discussion about adopting a plan that was more fair to blacks. I was surprised that some of the board members like Barry Musgrove and Tom Myrick, who had earlier expressed concern about adopting a redistricting plan that met with the approval of the Justice Department, were so willing to ignore the issues raised by the local and national chapters of the NAACP. In fact, I would say that Tom Myrick was one of the most vocal supporters of the school board adopting the police jury plan.

11. To my knowledge, the school board never asked Mr. Joiner about attempting to come up with a plan of his own that might facilitate black representation on the board.

[7]

12. I abstained from voting on adopting the police jury plan at the October 1, 1992 school board meeting. I felt the police jury plan was not fair to blacks and that

by abstaining I would draw more attention to this fact. I made a statement before the final vote on the plan. While I do not recall the exact words I said, the intent of my statement was to make a plea to the board to listen to and to work more closely with the minority coalition in an effort to make the minority community feel more a part of the system. I recall that I also voiced my concern about the lack of minority representation on the school board and that the police jury plan would do nothing to change that. There was no response from any of the school board members to my statement.

* * * *

Excerpts from U.S. Exhibit 106 (Direct Testimony of S. P. Davis)

* * * *

[1]

* * * *

1. I reside at 2129 North Cross Drive, Shreveport, Louisiana 71107. I have lived at this address for four years. I am an attorney and have practiced law for 20 years. I am currently the sole owner of the Davis Law Office, 4050 Linwood Avenue, Shreveport, Louisiana. I graduated from Southern University Law School in Baton Rouge, Louisiana. I also hold the rank of Lt. Colonel in the Army Reserves. I am the Battalion Commander of an Infantry Battalion stationed in Bossier City, Louisiana. I am married and have three children. My wife is an elementary teacher at the T.L. Rhodes Elementary School in the Bossier Parish School District. My oldest son is 24 years old and attended schools in the Bossier Parish School System for 12 [2] years. My daughter is 14 years old and attended Princeton Middle School in the Bossier Parish School System. She currently attends Bird High School in Caddo Parish. My youngest son is in the 5th grade at Platt Elementary School in the Bossier Parish School System.

2. I was raised in Bolinger, Louisiana, a small community located north of Plain Dealing in Bossier Parish, Louisiana. I attended the segregated school system in Bossier Parish. I graduated from the all-black Carrie Martin High School, which is now an elementary school. I still have family in Bossier Parish.

3. I am the attorney of record for the plaintiff-intervenors, the Bossier Citizenship Education Program, Inc. ("BCEP"), in *Lemon* v. *Bossier Parish School Board*,

C.A. No. 10,687 (W.D. La.) and have represented the BCEP since they sought intervenor status on February 12, 1976, which was granted on March 2, 1976.[1] The *Lemon* case was originally commenced on December 2, 1964, when black plaintiffs brought suit under 42 U.S.C. 1983 to desegregate the public schools of Bossier Parish. The school board was subsequently found liable for intentionally segregating the public schools in Bossier Parish in violation of the Fourteenth Amendment to the United States Constitution. *Lemon* v. *Bossier Parish School Board*, 240 F. Supp. 709 (W.D. La. 1965). From 1965-70, the parties were engaged in protracted litigation in which the Bossier Parish School Board strongly [3] resisted the desegregation of its schools, advancing one inadequate remedial plan after another, including three plans that were rejected by the Fifth Circuit Court of Appeals. On January 20, 1970, the current desegregation plan was approved by the *Lemon* court. The school district has never been declared unitary and that decree, with some modifications over the years, remains in effect today.

* * * *

[11]

22. The low number of black administrators, principals, and teachers in the school district and the fact that the school board has systematically shut out the black community from the policy and decision making aspects of the school system have adversely affected the black students in the Bossier Parish schools. These factors combine to create an atmosphere of racial hostility in the schools and result in black students having higher

---

[1] The United States was granted intervenor status as a plaintiff on April 3, 1965.

drop-out rates because they do not receive the same encouragement to excel as the white students. This is particularly true in the schools with student populations that are more than 80 percent white with corresponding faculties that are more than 80 percent white. Black students have higher suspension and expulsion rates than the white students in these schools. Black students are also less involved in extracurricular activities, such as cheerleading and dancelines, where the selection for these activities is done by the white [12] teachers. Years of having predominantly, if not exclusively, white squads in these activities has lowered the spirit and self-esteem of the black students, who no longer feel it is even worth competing because they will not be selected based solely on their race. A recent example at Haughton High School demonstrates that the school board's faculty hiring practices and attitude toward black students have perpetuated an atmosphere of racial hostility in the schools and in the community. In January, 1993, black students at Haughton High School protested the election by the student body of an all-white Winter Court, an event that takes place during basketball season. After the students' protest, the school administration took steps to include black students on the court. This effort fueled the long-standing racial tensions in the school and community. Threats of violence resulted in the school administration cancelling the Winter Court events.

* * * *

[16]

30. As I said earlier, I was raised in the Plain Dealing area of Bossier Parish and remain in touch with this

area through familial and professional ties. It is my understanding from counsel for the United States that the school board has asserted in the instant case that a community of interest does not exist among the black people who would reside in an election district that would include the areas of Plain Dealing, Benton and Princeton. I disagree with that assertion. While the black communities in these areas reside in different towns, they are united in their quest for an end to racial discrimination in Bossier Parish. That unity is clearly demonstrated in their continued struggle against the school board to eliminate, to the extent practicable, the vestiges of racial segregation. The opportunity to elect members to the school board who would [17] represent their views would certainly enhance the possibility that one day the children in the Bossier Parish Schools will be able to exercise their constitutional right to attend a system of schools that is unitary.

31. I personally know only one of the Bossier Parish School Board members, Mr. Henry Burns. I know Mr. Burns because we serve together in the Army Reserves. I have spoken with Mr. Burns on several occasions regarding school board matters that concern black students and the black community. Mr. Burns told me that while he personally favors having black representation on the board, other school board members oppose that idea. Nevertheless, to my knowledge, Mr. Burns has never taken a public stand on this issue. Mr. Burns and I have also discussed other issues such as black teacher recruitment and hiring, and the lack of opportunity for black students to participate in extracurricular activities sponsored by the school district.

* * * *

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

Civil Action No. 94-01495
(LHS (USCA), CRR, GK)

BOSSIER PARISH SCHOOL BOARD, PLAINTIFF

v.

JANET RENO, DEFENDANT

v.

GEORGE PRICE, ET AL., DEFENDANT-INTERVENORS

DECLARATION OF DR. GEORGE CASTILLE

LIST OF FIGURES

[Figures omitted from J.A. See U.S. Exh. 103 for originals]

Figure 1	Map of Bossier Parish showing major roads and municipalities
Figure 2-A	Map of 1992 Bossier Parish School Board Redistricting Plan showing district lines over black concentrations by Census block
Figure 2-B	Map of 1992 Bossier Parish School Board Redistricting Plan (close-up view of Bossier City), showing district lines and major roads over black concentrations by Census block
Figure 3	Map of 1992 irregular Bossier City corporate limit 1992 School Board district boundary along Hwy 71, showing odd-shaped district boundaries caused by following corporate limits
Figure 4	Map of 1992 School Board districts in Benton area showing separation of black urban developments outside the corporate limits from black neighborhoods within the corporate limits
Figure 5	Map of Plain Dealing showing urban development outside the corporate limits as of 1988 (base map 1981)
Figure 6	Map of 1992 School Board districts in part of Bossier City, showing separation of black Shaver Street neighborhood from adjacent black neighborhood.
Figure 7-A	Map of NAACP Alternative Plan, showing district lines over black concentration by Census block

Figure 7-B Map of NAACP Alternative Plan (close-up view of Bossier City), showing district lines and major roads over black concentrations by Census block

Figure 8 Map of Cooper Alternative Plan District 8 containing a 55% black voting age population

Figure 9 Map of 1992 School Board districts in part of Bossier City, showing separation of black Lamar Street neighborhood from adjacent black neighborhood.

I. INTRODUCTION

A. Qualifications and Experience

1. My name is George J. Castille, III, and I make this declaration pursuant to 28 U.S.C. 1746.

2. I received my Ph.D. in Geography at Louisiana State University in 1993. I teach Louisiana Geography at LSU and work full time as an independent consultant. Other teaching experience includes a course entitled "Old New Orleans and the Cajun Country" which was offered for continuing education credit for teachers, and I have also taught several introductory Geography and Anthropology courses. Over the past 10 years I have worked on about 12 to 15 projects involving disputes over boundaries or property ownership in south Louisiana. I gave expert witness depositions in two boundary dispute lawsuits, *Summersgill Dardar, et al. vs. Lafourche Realty Co. Inc.*, (E.D. La.) and *Hankamer et al. vs. Angelina Hardwood Lumber Co. et al.* (14th Judicial District Court, Calcasieu Parish). The expert witness testimony included interpretation of General Land Office Records, historic maps, and historical documents related to local and regional commerce. My Ph.D. research involved the analysis of Louisiana Supreme Court decisions related to the ownership of waterbottoms. This analysis explored the implications for changes in boundaries along the land/water interface as waterbodies are modified by natural means (see attached vita).

3. More recently, I co authored an expert witness report for *Ray Hays et al., vs. State of Louisiana. et al.* (W.D. La.), a case challenging the congressional districting plan for Louisiana on the grounds discussed in the Supreme Court decision in *Shaw* v. *Reno.* For the *Hays* case I conducted a geographical analysis of twentieth century congressional districts in Louisiana. I compared

the State's plan to prior Louisiana congressional plans and alternative plans proffered by the plaintiffs.

4. I have been retained by the United States to evaluate and compare the district boundaries of various Bossier Parish redistricting plans as to the extent the district boundaries follow such commonly used features as roads, streams, railroads, and corporate limits, and to analyze these plans from the perspective of such traditional redistricting principles as compactness and unifying communities of interest. I am being paid at the rate of $50.00 per hour.

B. Methodology and Data Collection

5. I have used available maps of Bossier Parish to compare the proposed 1992 School Board Plan, the NAACP Alternative Plan, and a second alternative plan developed by William S. Cooper, the redistricting expert employed by the defendant-intervenors in this case. Maps that were used to aid in the interpretation included Census maps, maps of prior redistricting plans in Bossier Parish, historical maps on file in the archives at the LSU Shreveport library, USGS topographic maps (scales 1:100,000, 1:62,500, and 1:24,000), maps produced by the computer-run geographic information systems (GIS maps) of both the United States and William S. Cooper, and road maps published by the Louisiana Department of Transportation and Development.

6. I also conducted a field investigation to examine the layout of the parish in detail and to determine the physical character of the boundary lines involved. During this field investigation, all major communities were visited and various roads were traversed from the Arkansas state line down to the southern end of the parish at the mouth of Loggy Bayou. During this trip, observations

were made as to the physical terrain, natural vegetation, obvious economic activities, settlement patterns, and concentrations of population. Such a field investigation is not necessary for a comparison of redistricting plans, which primarily involves the analysis of maps. In this case, however, the field investigation gave me a better picture of the specific sites on the maps which I analyzed, as well as a ground-level overview of the parish.

II . BACKGROUND AND HISTORICAL SETTING

7. A map of Bossier Parish is provided in Figure 1. Historically, the parish has changed from being primarily agricultural in character to being driven by commerce and industry. This change has driven population and migration trends, particularly with respect to blacks. In the decades after the Civil War, some black residents left the floodplain plantations for the far less agriculturally rich hill country and terraces. Those who remained on the floodplain plantations worked as sharecroppers, and the sharecropper system survived until the middle of the twentieth century. By the 1960s, most blacks had abandoned the floodplain plantations and had become concentrated in urban areas and the hill region. The limited economic potential of tenant farming and sharecropping was one reason why many blacks moved to the parish's cities and why others left the parish for the Northern states. This migration to the north and to urban areas began immediately after the Civil War and peaked during the 1930s and 1940s, accelerated by the Great Depression. (U.S. Census various years, Aiken 1978, Prunty 1955, Lewis 1987). The black out-migration from Bossier Parish continued through at least 1970, substantially reducing the black percentage within the parish. Specifically, the parishwide black percentage dropped from roughly 70% in 1890 to the roughly 20% level seen in 1990.

8. With the recent urban growth associated with the Shreveport-Bossier City metropolitan area, Bossier Parish is becoming increasingly urban in character. The present trend appears to be a continuation of the movement of African Americans from both the floodplain and hill regions to urban areas within Bossier Parish. Bossier City contains the largest concentration of African Americans; over half of the parish's black population lives in Bossier City. The black population within Bossier City is largely concentrated in only a few sections of the city, and the numbers are small compared to the city's white population. The black percentages are higher in the towns of Plain Dealing and Benton. Outside of urban areas, the greatest concentration of African American population in Bossier Parish now is still found in those hill and terrace regions, where soils provide the least agricultural (and therefore economic) potential.

III. COMPARING THE PROPOSED PLAN AND TWO ALTERNATIVES

A. Overview

9. The 1992 School Board Plan uses roads, streams, railroads, and corporate limits as boundary features. The plan relies heavily on roads and corporate limits, which in some cases causes splits of communities of interest—including, in several cases, black communities. The NAACP Plan avoids this fragmentation of communities by relying less on roads and corporate limits as boundaries, and more on streams. Overall, however, in terms of the use of logical, traditional boundary markers, the NAACP Plan is not significantly different from the 1992 School Board Plan. Many of the curves in the rural, northern-parish minority district in the NAACP

Plan are due to the use of natural boundaries such as streams. The Cooper Plar is similar to the NAACP Plan, except that the northern-parish minority district is more compact. Both plans demonstrate that two reasonably compact black-majority districts can be drawn in Bossier Parish for the Bossier Parish School Board. From the standpoint of adherence to traditional redistricting principles, the two alternative plans are no worse, and in some respects better, than the proposed plan.

B. Defining Boundaries

10. Boundaries associated with early settlement often correlated with physical features such as streams, lakes and ridges. However, the trend in post-colonial United States has been that of assigning boundaries based on artificial or man-made phenomena such as orientations of the compass, straight lines drawn between two landmarks, or roads.

11. As with other parishes, Bossier Parish has been subdivided into election districts that correspond to voting areas for Police Jury members, School Board members, or for other elected offices. Generally the district boundaries follow four common features: streams, roads, railroads and corporate limits. In cases where no physical or man-made feature exists, boundaries sometimes follow arbitrary lines that are related to property boundaries.

12. While common, the use of corporate limit lines as district boundaries can be problematic. Corporate lines are frequently drawn in an arbitrary manner. The arbitrariness can stem from an extension of corporate limits well beyond the area of present occupation in an effort to provide room for urban growth. Corporate lines are also a problem when they are not revised, or are revised

only infrequently, to accommodate urban growth outside the corporate limits. Either boundary phenomenon can result in the splitting of communities of interest.

C. The proposed 1992 Bossier Parish School Board Plan

13. As with previous districting plans, the 1992 Bossier Parish School Board Plan (Figures 2-A, 2-B) follows common boundary delimitation practices. District outlines follow typical boundary markers for parish subdivisions. As noted above, the more common district delimiters are roads, streams, railroads, and corporate limit lines. Several more unusual district boundaries include the limits of Barksdale Air Force Base and a division line that runs through the middle of the Air Force base.

14. A few other boundary anomalies were also observed. One example is the unusually shaped boundary along Highway 71 in south Bossier City (Figure 3, blue shading), where a long finger of land from District 12 extends into District 1, ending in a triangular head (Figure 3, Location A). This projection follows an odd-shaped corporate boundary for Bossier City (Figure 3, yellow shading). The Highway 71 anomaly may reflect both an attempt to exclude a stockyard (Figure 3, Location C) from the corporate limits while expanding the limits to include a new subdivision and trailer park (Figure 3, Location B).

15. In another instance, the Benton corporate limits serve as a district boundary, but this particular boundary fragments neighborhoods with economic and racial commonalities. The community of Benton has expanded outside the corporate limits in several areas, and until the corporate limits are revised to include those areas. of

expansion, the corporate limits will continue to fragment those black neighborhoods that straddle the corporate line. By following the corporate limits, the School Board Plan's district boundary reinforces the fragmentation of some black neighborhoods, splitting them between Districts 3 and 4. One cluster of black families lives along Shaffers Road along the east side of Benton (Figure 4, Location A), and the large black subdivision of East Benton lies along Highway 162 just north of the Benton Community Club Cemetery (Figure 4, Location B). Another group of black residents is located immediately north of the Benton corporate limits at the end of Second Street (Figure 4, Location C). The case of Benton illustrates how strict adherence to the legal corporate limits can exclude neighborhoods from the voting area of the socia' and cultural community as a whole—in this case, the black community. The NAACP and Cooper Plans avoid this fragmentation.[1]

16. As in Benton, the district boundary lines within Bossier City have effectively divided well-established neighborhoods that are predominantly black. For example, the area bounded by Shaver, Beckett, Fuller and McArthur Streets (Figure 6, green shading) is included

[1] While not directly related to the boundaries in the 1992 School Board Plan, the corporate limits of Plain Dealing, as they existed during the 1970s and 1980s, provide another recent example of a Bossier Parish community in which relatively large, predominantly black subdivisions lie immediately outside of the official limits of a community. In the case of Plain Dealing, the corporate limits were extended 1/2 mile to the southwest along a rural highway to incorporate a single white residence (Figure 5, Location A). (That extension was deannexed in recent years, at the request of the sole white resident included.) If the corporate limits were extended *less* than 1/2 mile to the west, then the official community could incorporate DeMoss Hill subdivision, a predominantly black neighborhood of over 50 homes and two churches (Figure 5, Location B). Another

within District 8 when it easily could have been placed within District 7, located immediately to the west. Culturally, this black neighborhood is more likely tied to the black residential area immediately to the west (Figure 6, Location D) than to the heavy commercial strip (Figure 6, pink shading) located along the four-lane Highway 3 (Benson Road) immediately to the east. By setting the boundary along the railroad, the School Board Plan has cut off this neighborhood from the larger community, thus separating approximately 35 houses. Under the School Board's Plan, then, a railroad serves as the arbitrary boundary between two districts, splitting a black community. A nearby road could just as easily have been selected as the boundary, and the larger neighborhood could have remained intact. This is a clear example where a black neighborhood is fragmented by district boundaries. This fragmentation is avoided in the NAACP and Cooper Plans.

C. The NAACP Alternative Plan

17. The NAACP Plan was generated from the 1990 Census database (1992 TIGER/Line Files) using a redistricting computer. The minimum unit of measure was the Census block. Census block boundaries, as designed by the Census Bureau, correspond to visible natural or man-made features.

18. The NAACP plan demonstrates that two reasonably compact districts could be drawn which encompass

---

even larger black subdivision, known as Carstarphen Heights, is located immediately south of the corporate limit (Figure 5, Location C). Of course, none of the redistricting plans which I examined have boundaries which follow the Plain Dealing corporate limits; Figure 5 merely illustrates another example of "underbounding" within Bossier Parish.

the significant black population concentrations that exist in Bossier Parish, one in Bossier City (Figure 7-B) and one in the northern central, more rural region of the parish (Figure 7-A). This results in two majority-black districts. District 2 begins in the extreme northwestern corner of the parish and follows the Red River south, extending to the community of Princeton in the north-central part of the parish (Figure 7-A). District 1 is "C"-shaped and is located entirely within the heavily urbanized portion of Bossier City (Figure 7-B).

19. The NAACP alternative plan creates district boundaries that are significantly different from the boundaries of the proposed 1992 School Board Plan. Nevertheless, the alternative boundaries generally follow the same types of natural and man-made features as in the School Board Plan. The boundaries of the NAACP alternative correspond primarily to existing roads and streams, and utilize streams to a greater extent than the School Board Plan. The alternative plan also utilizes railroads, existing district lines, the limits of Barksdale Air Force Base, corporate limits of various communities, an electrical high power line, several rural unimproved roads, and parish ward boundaries. All of these types of boundaries of course reflect visible local features that outline the census blocks. Overall, in the use of logical features such as roads, streams, etc., as boundary markers, the NAACP Alternative Plan is not significantly different from the proposed plan.

20. Stream boundary correlations were noted in at least 14 locations as opposed to 6 in the School Board Plan. While some of the districts in the alternative plan are more elongated than districts of the proposed School Board Plan, this is due to the greater use of streams as boundaries. The more extensive utilization of streams as boundaries is a positive factor. As discussed above, the

use of roads in the School Board Plan has in some cases resulted in the fragmenting of communities of interest. This is not the case with the use of streams as boundaries in the alternative plan. Roads in Bossier Parish are used for transportation today far more than streams, and thus tend to attract settlements along both sides of the road. Conversely, communities of interest straddle streams in Bossier Parish to a much lesser extent, and using streams as boundaries is less problematic.

21. The "fingers" or small projections along the east side of District 2 immediately southeast of Plain Dealing are simply reflections of Census block boundaries that follow stream courses (Figure 7-A, Location A). Irregular-shaped Census blocks, and therefore irregular-shaped district boundaries, are much more likely to occur in rural parishes with hilly terrain such as Bossier Parish than in relatively flat areas such as in the southwestern part of Louisiana.

22. Slightly irregular-shaped boundaries also occur in District 2 immediately north of Plain Dealing (Figure 7-A, Location B), within the Bodcau Wildlife Management Area in the east central part of the parish (Location C), and in the areas immediately north and east of the Black Bayou Reservoir (Locations D and E). These irregular shapes represent boundaries that follow local stream patterns and rural roads.

23. The NAACP alternative plan also differs from the School Board Plan in that, unlike the School Board Plan, district lines divide the corporate limits of Benton, Haughton and Plain Dealing. However, the strict adherence to corporate lines can exclude some subdivisions that are immediately outside the corporate limits but should be considered as part of the suburban core of these communities. As noted previously, examples of

excluded suburban development were found through a field and map investigation of the community of Benton (Figure 4). The NAACP and Cooper Plans avoid this division of areas with a community of interest.

24. Another way in which the alternative plan differs from the proposed plan is in the use of unimproved roads and a powerline as boundaries. While not evident on some parish maps, such features are easily recognizable on USGS topographic quadrangle maps and are of course readily identifiable to people living in the vicinity.

25. The NAACP plan demonstrates that Census blocks can be grouped in such a way that predominantly black districts are created. To create such districts it may be necessary to disregard some of the established official boundaries, such as corporate limits, particularly if those boundaries do not reflect cultural changes that are visible geographically. In the use of logical features such as roads, streams, etc., as boundary markers, the NAACP's Alternative is not significantly different from the proposed plan. It contrasts with the School Board Plan in that it emphasizes the cultural or social element (ie. where people actually live) rather than the strict adherence to arbitrary boundaries that in many ways are not reflective of the cultural conditions that exist today. It is important to realize that boundaries are not only a means of defining an area; boundaries are also a means of exclusion from an area.

D. The Cooper Alternative District 8

26. The final district plan examined in this study is one prepared by William Cooper (Figure 8). The Cooper plan creates a northern parish district that is at least 55 percent black in voting age population. The general shape and location of District 8 of the Cooper

plan is similar to District 2 of the NAACP alternative, but District 8 in the Cooper plan is a little shorter and more compact. With the exception of seven boundary segments, the delimitation of District 8 matches boundary features discussed in either the School Board Plan or the NAACP plan. These seven new boundary segments include roads, streams, and an unimproved road. All of these, of course, follow boundaries of Census blocks. As compared to the two previous plans, the types of features making up the Cooper plan boundaries are more similar to those found in the School Board Plan because it emphasizes roads to a much greater extent than streams.

27. The Cooper district is similar to the NAACP plan's District 2 in that both divide the corporate limits of the communities of Plain Dealing and Benton. But as noted in the School Board Plan discussion, in communities where an exclusionary settlement pattern occurs, the official corporate limits are not a fair representation of the community as a whole, and the exclusionary nature of this type of boundary invalidates the logic of strict adherence to corporate limit lines as a means of delimiting districts. Again, a boundary is created to serve the culture that creates it, not the other way around.

I declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge.

/s/ GEORGE J. CASTILLE, III
GEORGE J. CASTILLE, III
April 4, 1995

REFERENCES

Aiken, Charles S.
1978 The Decline of Sharecropping in the Lower Mississippi River Valley, in *Man and Environment in the Lower Mississippi Valley, Geoscience and Man, Vol. 19* edited by Sam Hilliard, School of Geoscience, Louisiana State University, Baton Rouge-Louisiana, pp. 151-165.

1987 Race as a Factor in Municipal Underbounding, *Annals of the Association of American Geographers*, Washington, D.C.

Cardin, Clifton D.
1993 *Bossier Parish History, The First 150 Years, 1843-1993.* ImagePress, Shreveport, Louisiana.

Cook, Philip C.
1984 The North Louisiana Upland Frontier: The First Three Decades, in *North Louisiana, Volume One: To 1865*, edited by B.H. Gilley. McGinty Trust Fund Publications, Ruston, Louisiana.

Division of Research
1949 *An Economic Survey of Bossier Parish.* Prepared for The Texas and Pacific Railway Company by the College of Commerce, Louisiana State University, Baton Rouge.

Humphreys, Hubert D.
1984 The "Great Raft" of the Red River, in *North Louisiana, Volume One: To 1865*, edited by B.H. Gilley. McGinty Trust Fund Publications, Ruston, Louisiana.

Louisiana Cooperative Extension Service
1993 *Louisiana Summary. Agriculture and Natural Resources.* Louisiana State University, Agriculture Center, Baton Rouge.

Lewis, Pierce
1987 America Between the Wars: The Engineering of a New Geography, in *North America, The Historical Geography of a Changing Continent*, edited by Robert D. Mitchell and Paul A. Groves. Rowan and Littlefield, Totowa, New Jersey, pp. 410-437.

Louisiana Geological Survey
1984 *Geologic Map of Louisiana.* Baton Rouge, Louisiana.

Prunty, Merle C.
1955 The Renaissance of the Southern Plantation, *Geographical Review* Vol. 45, pp. 459-491.

Public Affairs Research Council of Louisiana
1965 *A Statistical Profile of Bossier Parish.* Baton Rouge, Louisiana.

1973 *A Statistical Profile of Bossier Parish.* Baton Rouge, Louisiana.

[Castille vita attached to U.S. Exh. 103 omitted from J.A.]

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

Civil Action No. 94-01495

(LHS (USCA), CRR, GK)

BOSSIER PARISH SCHOOL BOARD, PLAINTIFF

v.

JANET RENO, DEFENDANT

v.

GEORGE PRICE, ET AL., DEFENDANT-INTERVENORS

DECLARATION OF DR. RICHARD ENGSTROM

Pursuant to 28 U.S.C. Section 1746, I, Richard L. Engstrom, make the following declaration.

1. I am currently research Professor of Political Science at the University of New Orleans, in New Orleans, Louisiana, and Chairperson of the Representation and Electoral Systems Division of the American Political Science Association. A copy of my current curriculum vitae is attached to this declaration as Appendix A.

2. I have done extensive research into the relationship between election systems and the ability of minority voters to participate fully in the political process and to elect candidates of their choice. The results of my

research have been published in the *American Political Science Review, Journal of Politics, Western Political Quarterly, Legislative Studies Quarterly, Social Science Quarterly, Journal of Law and Politics, Electoral Studies,* and other journals and books. Three articles authored or co-authored by me were cited with approval in *Thornburg v. Gingles,* 478 U.S. 30, 53 n.20, 55, 71 (1986), the Supreme Court decision interpreting amended section 2 of the Voting Rights Act. I have also testified as an expert witness in over 30 voting rights cases in federal courts across the United States.

3. I have been requested by attorneys for the Department of Justice to examine the extent to which voting in recent elections involving a choice between or among African American and white candidates in Bossier Parish has been "racially polarized," as that concept has been defined by the United States Supreme Court in *Thornburg v. Gingles.* According to the Supreme Court, voting is racially polarized when there is "a consistent relationship between (the) race of the voter and the way in which the voter votes " or expressed more simply, when "black voters and white voters vote differently" (at 53 n.21). I am being compensated at a rate of $800 per day for my work on this case.

4. Elections involving an interracial choice of candidates have been analyzed because such elections are considered to be the most probative of racially polarized voting. Elections presenting voters with a choice between or among African American and white candidates were the only elections referenced by the Supreme Court in *Thornburg* (see the review of the evidence at 52 and 58-61, and Appendix A at 80). The Fifth Circuit has ruled in *Citizens for a Better Gretna* v. *City of Gretna,* a Louisiana case, that "implicit in the Gingles holding is the notion that black preference is determined from elections which offer the choice of a black candidate." 834 F. 2d 496, 503 (1987).

5. As a general matter, the most relevant interracial elections to analyze are recent elections for the office at issue, but when only a few minority candidates have contested elections for that office, it is appropriate to analyze the voting in interracial elections to other offices as well [see *Westwego Citizens for a Better Gov't v. City of Westwego,* 872 F. 2d. 1201, 1208-1209 n.9 (5th Cir. 1989)]. I have analyzed therefore not only the three most recent interracial elections for seats on the Bossier Parish School Board, which were held in 1986, 1990, and 1993, but also other interracial elections. These include the only parishwide interracial election for a local office in recent years (the 1988 election for a seat on the 26th Judicial District Court) and all of the elections to local offices within the parish during the 1990s that involved an interracial choice of candidates.

6. Voters across all of Bossier Parish have been presented with a choice between or among African American and white candidates for local offices on only one occasion in recent years. That occurred in the 1988 primary election for a seat on the 26th Judicial District Court. In order to determine the extent to which voting in this election was divided along racial lines, I have performed a bivariate ecological regression analysis and a homogeneous precinct (or extreme case) analysis of this election. These are the standard methodologies, approved by the Supreme Court in *Thornburg,* for assessing racial divisions in voting through precinct-level election returns (at 52-53).

7. Homogeneous precinct analysis focusses on precincts in which the voters are predominantly of one race or the other. The votes cast in these precincts provide the basis for estimates, under this methodology, of

the level of support that each of the respective groups has provided a particular candidate. In the 1988 primary election, over 90 percent of the people signing in to vote was white in 25 of the 43 precincts in Bossier Parish. These precincts are identified therefore as homogeneously white. The African American candidate for the seat on the 26th Judicial District Court in this election, Bobby Stromile, was not the choice of the voters in these homogeneous white precincts. Stromile received 31.1 percent of the votes cast in this election in these 25 precincts, compared to 69.9 percent for his white opponent. The highest percentage of African Americans among those signing in to vote in any of the precincts was 75.1, so none of the precincts can be considered homogeneously African American and no extreme case estimates of the African American support for Stromile can be derived from this analytic technique.

8. Estimates of the support for Stromile among both African Americans and whites can be derived through regression analysis, however. This procedure relies on the votes cast in all of the precincts, not just those that are cast in racially homogeneous precincts. Regression analysis is based on a systematic comparison of the votes cast for the various candidates in each of the precincts and the relative presence of African Americans among those signing in to vote in each precinct. There is a very consistent relationship between the percentage of those signing in to vote that was African American in each precinct and the percentage of the votes received by Stromile in the precincts. This relationship can be summarized by a correlation coefficient, which has a value of 1.0 when the relationship is perfectly consistent. The value of the correlation coefficient for the relationship between Stromile's vote and the racial composition of the precinct is .842, which is statistically significant at .0001 (in other words, the

probability of a relationship of at least this magnitude occurring by chance is less than 1 in 10,000). The estimate of Stromile's support among the African Americans voting in this election, derived through regression analysis, is 79.2 percent. The regression-based estimate for his support among the whites voting in this election is 28.9 percent.

9. In addition to this latest parish-wide election, I have examined the votes cast in the last three elections for seats on the school board in Bossier Parish in which the voters in the respective districts had a choice between African American and white candidates. The most recent of these elections was in 1993. The other two occurred in 1990 and 1986.

10. The 1993 election was a special election for the District K seat on the parish school board. The African American candidate in this election, Jerome Blunt, had been appointed to this seat in 1992. He sought election to the seat the following year, along with one white candidate. District K is a homogeneously white district. At the time of this election, 92.0 percent of the registered voters in this district was white. On election day, 97.4 percent of those signing in to vote was white. Blunt was obviously not the choice of the white voters in this election. Blunt lost his seat on the school board to his white opponent, receiving only 23.9 percent of the votes cast. Even if every vote Blunt received had been cast by a white voter, and every African American who signed in to vote had cast a ballot for Blunt's opponent, Blunt would still have received only 24.5 percent of the white votes in this election. Which candidate was in fact the choice of the few African American voters in this election cannot be determined through these precinct-level data.

11. The 1990 and 1986 interracial school board con-

tests were both held in District J. The African American candidate in 1990 was Johnny Gipson, who competed with one white candidate for the position. In 1986 the African American candidate was Jeff Darby, who also competed for the position with one white candidate. Both of these candidates lost the election in this majority white district.

12. District J consisted of two precincts that have been described in this case's *Joint Statement of Material Facts and Conclusions of Law About Which There Is No Dispute* as "distinctive" and "unique" precincts in Bossier Parish (paragraphs 161 and 162). These were precincts 2-15 and 2-16, which included Barksdale Air Force Base and areas adjacent to the base. Many of the white voters in this area are military retirees who are not from Louisiana, let alone from Bossier Parish, and who therefore "tend on average to vote in a less polarized way" than other whites in the parish (paragraphs 162 and 163).

13. At the time of these elections, precinct 2-16 was homogeneously white and precinct 2-15 was racially mixed. In precinct 2-16, 97.4 percent of those signing in to vote in 1990 was white, and 99.2 percent of those registered to vote in 1986 was white. (Sign-in information is not available for elections prior to 1988.) In both of these elections, this precinct supported the white candidate. Gipson received 31.8 percent of the votes cast in this precinct in 1990, and Darby received 26.6 percent in 1986. In contrast, Gipson and Darby both won precinct 2-15 in these elections. African Americans constituted 48.9 percent of those signing in to vote in 2-15 in 1990, and 48.9 percent of those registered to vote in 1986. Gipson received 73.5 percent of the votes cast in that precinct in 1990, and Darby received 75.9 percent of the votes cast in 1986. While the data for these two

precincts do not provide a sufficient basis for deriving specific point estimates of the support of the different groups for Gipson and Darby, the contrast in candidate support between the two precincts certainly suggests that these African American candidates were the choice of the African American voters in these elections, but not the choice of the white voters.

14. In addition to the analyses reported above, I have also examined the vote in the six other elections in the parish during the 1990s in which voters were presented with a interracial choice of candidates. These elections occurred in different places around the parish. They include the elections for the District 1 and District 2 seats on the Bossier City Council in 1993, an election for the Haughton Board of Alderman and an election for Mayor in Benton in 1992, and a parish Police Jury election for District 7 and a mayoral election in Haughton in 1991. In all of these elections, a majority of those signing in to vote was white, and in all of these elections the African American candidates were defeated, including the two African Americans who were incumbents at the time.

15. In the Bossier City Council elections in 1993, Will Jones was the African American candidate in District 1 and Jeff Darby was the African American candidate in District 2. Jones had two white opponents, while Darby, an incumbent, had one white opponent.

16. Voters in five precincts, all of which were homogeneously white, participated in the District 1 election in Bossier City. The percentage of people signing in to vote in this district that was African American was 4.9. The African American candidate in this election, Jones, was not the choice of white voters, having received only 10.1 percent of the votes cast in this election.

17. The other Bossier City councilmanic election occurred in District 2. Precinct election returns and sign-in data indicate that in this election the African American voters preferred Mr. Darby while the white voters preferred his white opponent. Mr. Darby's vote exceeded his opponent's vote in the only two precincts in which a majority of those signing in to vote was black. He received 66.2 percent of the votes cast in precinct 2-8, in which 72.0 percent of those signing in to vote was black, and 57.5 percent of the votes cast in precinct 2-15, in which 85.5 percent of those signing in to vote was black. The only other precinct that Darby won was his home precinct, 2-16, a homogeneously white precinct in the Barksdale Air Force Base area in which he received 52.7 percent of the votes cast. Darby lost the other four precincts, three of which were homogeneously white. He received 36.7 percent of the votes cast in these precincts, and 46.7 percent in the district overall.

18. Darby's overall support among the African Americans voting in this election is estimated, through regression analysis, to be 61.0 percent, while his vote among the white voters is estimated to be 41.3 percent. The correlation coefficient for the relationship between the percentage of the votes received by Darby and the racial composition of the precincts is .569. This coefficient, based on only seven precincts, is not statistically significant. In the homogeneous white precincts Darby received 45.7 percent of the votes cast.

19. In October of 1992, Cashie Cole, an African American incumbent on the Haughton Board of Aldermen, lost his bid for reelection. This was an at-large election in which five seats were to be filled and each voter had five votes to cast. All of the votes cast in the Haughton election were cast in one precinct, so no estimates of the racial division in the vote can be pro-

vided. African Americans constituted a minority, 25.6 percent, of the people signing in to vote in this precinct, however, and Mr. Cole finished sixth among seven candidates, with 13.9 percent of the votes cast.

20. Another interracial election in 1992 was a mayoral contest in the Town of Benton. Votes in this election were also cast in a single precinct, so again no estimates of the racial breakdown in the vote can be provided. African Americans constituted 38.3 percent of the people signing in to vote in this precinct, and the African American candidate, Thelma Harry, received 36.2 percent of the votes cast.

21. In October of 1991, African American candidates competed with white candidates for the District 7 seat on the parish Police Jury, and for the mayoralty in Haughton. District 7 for the Police Jury consisted of five precincts. Precinct election returns indicate that the African American candidate in that contest, Leonard Kelly, was the choice of neither the African American voters nor the white voters. A regression analysis of the five precincts in this election produces an estimated vote for Kelly among African Americans of 41.5 percent, and among whites of 33.8 percent. The correlation coefficient for the relationship between the percentage of the votes received by Kelly and the racial composition of the precincts is .270. This coefficient is not statistically significant. Only two precincts were racially homogeneous; both were white precincts in which Kelly received 38.3 percent of the votes. (The only other African American candidate for a seat on the Police Jury in 1991 was Jerome Darby, an incumbent seeking reelection in District 10. There was no election in this district, however, as Mr. Darby was unopposed.)

22. The other election in 1991, that for the mayoralty in Haughton, was held in one precinct, so once again no

racial breakdown of the vote can be estimated. African Americans constituted 25.4 percent of those signing in to vote in this precinct, and the African American candidate in this contest, Mark Hill, finished last among three candidates, with 10.8 percent of the votes.

23. In summary, the only parishwide election in recent years in which the voters in Bossier Parish had a choice between an African American and a white candidate for a local office, the 1988 election for a seat on the 26th Judicial District Court, resulted in the voters being clearly divided along racial lines. Had only the votes of the African American voters been counted in that election, Bobby Stromile, the African American candidate, would have won that election. Stromile, however, was vetoed by the white voters of the parish. African American voters likewise would have elected Johnny Gipson to the school board in 1990 and Jeff Darby to the school board in 1986. These candidates were also vetoed by the white voters in those elections. In all three of these elections, therefore, voting was "racially polarized." While it is impossible to determine, given the limited data, whether Jerome Blunt was the candidate of choice of the few African American voters in the District K election for the school board in 1993, it is without question that he also was not the choice of the white voters in that election.

24. All of the other African American candidates competing in interracial elections in areas throughout the parish during the 1990s also lost. Data limitations preclude a determination of who the choice of African American voters was in all but two of these elections, the District 2 contest in Bossier City in 1993 and the District 7 Police Jury election in 1991. In the first of these elections, the African American candidate, Jeff Darby was an incumbent favored by the African

American voters in the district. He was defeated, however, by the white voters. In the Police Jury contest, the African American candidate does not appear to have been favored by either racial group. While the data for the District 1 election in Bossier City in 1993 do not allow one to determine who the choice of African American voters was, it is without question that the African American candidate, Will Jones, was not the choice of white voters. The remaining three elections were held in only a single, mostly white precinct, and in all three the African American candidates were likewise defeated.

25. Given the differences in the candidate preferences of the African American and white voters in Bossier Parish revealed in the analyses reported above, I must conclude that African American voters are likely to have a realistic opportunity to elect candidates of their choice to the Bossier Parish School Board only in districts in which they constitute a majority of the voting age population.

I declare, under penalty of perjury, that the foregoing is true and correct. Executed on December 8, 1994.

/s/ RICHARD L. ENGSTROM
RICHARD L. ENGSTROM

[Engstrom vita attached to U.S. Exh. 107 omitted from J.A.]

Excerpts from Defendant-Intervenors' Exhibit B (Final Direct Testimony of Defendant-Intervenor George Price dated April 9, 1995)

* * * *

[8]

17. On September 24, 1992, approximately 40 black citizens from various parts of the community attended the public hearing on redistricting. About 4 or 5 persons spoke against the plan on behalf of our coalition. I attended this meeting and was one of the speakers. All of these speakers spoke in favor of adoption of a plan that resembled the NAACP proposal and contained two majority black election districts. Not one person present at the public hearing spoke in favor of adoption of the Police Jury plan. The NAACP Redistricting Project had sent me a memo which I could use as the basis of my presentation to the Board. That memo is attached as Defendant-Intervenors' Exhibit 10. My presentation to the School Board covered all of the points in the memo as I basically read it to the Board. I again repeatedly emphasized that federal law should prevail over state law and that they could not ignore the Voting Rights Act over concern about precinct lines. I told them that the precinct law should not infringe on any citizen's right to vote. I told them that Joiner wasn't a lawyer and was wrong in what he told them. The School Board members listened to the comments of our representatives, with some of them occasionally stating that they couldn't do anything because of the problem with the precinct lines. The Board took no action at the hearing but just adjourned after hearing the comments from the public.

Excerpts from Defendant-Intervenors' Exhibit B (Supplemental Testimony of Defendant-Intervenor George Price dated April 9, 1995)

* * * *

28. Sometime after the School Board had submitted its proposed redistricting plan to the Department of Justice, I had lunch with the Board president at the time, Barry Musgrove. A local minister, Reverend John Dansby joined us. I remember this meeting in particular because we ate at the University Club in downtown Shreveport, near Mr. Musgrove's office. I had been continuing to encourage the School Board publicly and some School Board members privately to consider a redistricting plan with some black majority districts. Mr. Musgrove told me at this lunch meeting that there "just was not anything he could do" to get the Board to consider such a plan. He did not mention anything about splitting precincts or about the shape of black majority districts, but explained that "the votes simply were not there." He said that, while he sympathized with the concerns of the black community, there was nothing more he could do for us on this issue because the Board was "hostile" toward the idea of a black majority district.

29. I also recall a discussion sometime in 1993 with another School Board member, Thomas Myrick. Several Board Members had met with several representatives of the black community to discuss some of our concerns about the operation of the School District. The meeting was fairly tense. After the meeting, Thelma Harry and I had a discussion with Mr. Myrick. One of the issues that had come up in the meeting was the fact that Plain Dealing High School, a predominantly black school in Mr. Myrick's district, was the only Bossier Parish high school not to receive computers with certain dedicated

revenues received by the Board. Mr. Myrick was angry and said that he was doing the best he could do. He then asked us why we wanted "his seat." He said that he had worked too hard to get that seat and that he would not stand by and "let us take his seat away from him."

[NAACP letterhead omitted]

March 25, 1992

Mr. W. T. Lewis
Superintendent, Bossier Parish School System
School Board
P.O. Box 218
Benton, Louisiana 71006

Dear Superintendent Lewis:

It is my understanding that the Bossier Parish School Board is in the planning stage of reapportionment of school districts in Bossier Parish. If that is true, I would like to be included in all phases of the plan, and be place[d] on the list to be notified whenever this issue is discussed.

I understand that in accordance with Federal rules because there are no minorities on the School Board, I would like to represent a portion of the community in this process.

I look forward to hearing from you concerning this matter in the very near future.

Respectfully yours,

/s/ GEORGE PRICE

GEORGE PRICE
President, Bossier Parish NAACP

[NAACP letterhead omitted]

August 17, 1992

Mr. W. T. Lewis, Superintendent
Bossier Parish School System
School Board
P.O. Box 218
Benton, Louisiana 71006

Dear Superintendent Lewis:

In a previous letter dated March 25, 1992, a request was made to you concerning the reapportionment of school districts in Bossier Parish. In that letter the Bossier Parish Branch NAACP requested to be included in the reapportionment process and to this date, August 17, 1992, we have not received a reply from your office. It is now our understanding that this process is nearly completed. We regret this. Therefore, we advise you that the Bossier Parish Branch NAACP will be in opposition to the continuation of school districts that do not fairly represent all parish citizens.

We further request that the Bossier Parish Branch NAACP be allowed to come before the Bossier Parish School Board and present our views on the issue. As you know there are no Blacks on the School Board nor has there ever been. We are very concerned about this and feel that this issue must be addressed in the reapportionment process in order to create a School Board that represent the ethnic make-up of the Parish.

We look forward to working with you and the demographer in order to create districts that provide fair opportunity for anyone desiring to participate in the democratic process that select members for the School Board.

Because of the progress already made in this matter, we look forward to hearing from you within the next ten working business days.

Respectfully yours,

/s/ GEORGE S. PRICE

GEORGE S. PRICE, President

Bossier Parish Branch NAACP

September 18, 1992

Mr. David Harvey
President, Bossier Parish School Board
P.O. Box 2000
Benton, Louisiana 71006-2000

In Turn: Mr. W.T. Lewis
Superintendent, Bossier Parish Schools
P.O. Box 2000
Benton, Louisiana 71006-2000

Dear Mr. Harvey:

We, Citizens of Bossier Parish, requested that you as our elected officials, develop and establish three black school board districts that will greatly increase the possibility of minorities to be elected and represented on the Bossier Parish School Board. We believe that any plan that does not provide for fair and true democratic representation for all citizens should not be approved by this board.

We request that you give the plan submitted by the NAACP your upmost consideration and that you use it as a foundation to create black minority districts. All parish citizens must be represented in the democratic process which governs our schools and by having them included, we create a school system that is strong, effective and impartial.

Therefore, we urge you to reject any plan that does not provide true representation for all citizens of the parish. This does include rejection of districts that parallel with existing or recommended lines of the election districts of the Bossier Parish Police Jury.

Respectfully submitted:

/s/ GEORGE S. PRICE
GEORGE S. PRICE
NAACP
Men's Club of Bossier

/s/ JERRY HAWKINS
JERRY HAWKINS
Concerned Citizens
Men's Club of Bossier

/s/ JAMES ABRAMS
JAMES ABRAMS
Voters League

/s/ MARY WIGGINS
MARY WIGGINS
Bossier Housing Tenant Coalition

/s/ ANDREW DAVIS
ANDREW DAVIS
Concerned Parents of Plain Dealing

NAACP REDISTRICTING PROJECT MEMORANDUM

To: George Price, Bossier Parish NAACP

From: Samuel L. Walters, Assistant General Counsel
Ian Millett, Redistricting Analyst

Date: September 24, 1992

Re: Redistricting of Bossier Parish School Board
NAACP Proposal for Election Districts
"Legal Opinions" Given to Board by Gary Joiner

In light of our recent conversation in which you informed me of the proceedings before the Bossier Parish School Board, I wish to provide you with the following information which you can use in advocating your position before the Board. Some of these points have been made by you before, but it might be useful for you to have received the information from a lawyer since no attorney is stepping forth to tell the Board the undisputed principles of law that should control the redistricting of the Board.

1. The laws and Constitution of the United States are superior to those of Louisiana or any other state.

The laws and Constitution of the United States are always supreme to those of the various states. The Louisiana law stating that election districts must be created from whole precincts must give way to the requirements of the Voting Rights Act and the U.S. Constitution. While it might be true that adoption of school board district lines that cross existing precinct lines is a violation of that Louisiana law, that is not a sufficient justification for violating Federal law. In all likelihood the oath of office taken by each of the current school

board members included a pledge to uphold the laws and Constitution of the United States. The current board members should be mindful of this. The law requiring use of precincts is not in and of itself illegal, but it is a violation of the Voting Rights Act if its implementation causes dilution of the minority vote. Such is clearly the case in Bossier Parish.

Terrebonne Parish tried to use this argument to avoid creating a majority black district and our challenge to the Justice Department resulted in them having to redraw their lines to create a third district. These districts were created using census blocks.

2. Mr. Gary Joiner is a map drawer, not a lawyer, and his attempts at giving legal advice should be treated accordingly.

It seems that the local lawyers are abdicating their responsibility to provide the board with sound legal advice and are letting Mr. Joiner step into this vacuum and give "legal evaluations" of the various plans now before the board. Mr. Joiner is not a lawyer and is not aware of all of the legal ramifications of these evaluations. Furthermore, the evaluations are simply wrong. However, what is more disturbing is the fact that Mr. Joiner knows that the law is contrary to the opinions he is giving to the board. He and I have had conversations where he acknowledged that using the whole precinct law in this case and several others prevents or impedes the creation of a majority black district and thus constitutes a violation of the VRA. He also understands the concept that Federal law is supreme.

3. The fact that the Justice Department precleared the earlier plan does not in anyway mean that the School Board's submission of the same district lines will be precleared or that they will withstand a lawsuit.

The Police Jury plans were precleared without any opposition. Since there were no presentations of alternate maps showing that other configurations offered more empowerment opportunities for the black community, the Justice Department probably didn't look at the Police Jury lines too hard. If the School Board persists and passes the same district lines, they can be assured that the NAACP Redistricting Project will assist the local Branch and have a letter of opposition and the alternate maps to the Justice Department before the Parish's submission is even in to Justice.

Even if the Justice Department were to preclear the same plan, such preclearance does not make the Parish immune from litigation. The Voting Rights Act specifically states that Justice Department preclearance under Section 5 does [*sic*: not] determine the outcome of litigation filed under the more general provision of Section 2, nor does it preclude the filing of such litigation.

Excerpts from Defendant-Intervenors' Exhibit B (Final Direct Testimony of Defendant-Intervenor Thelma Harry dated April 9, 1995)

* * * *

[7]

16. On several occasions in recent years, the NAACP has presented the School Board with a list of concerns about the operation of the school system. These lists have been developed from meetings of the executive committee of the NAACP where we tried to take all of the many complaints we had received about the school system and put them into categories. Most of these lists have contained the same problems over and over as no action ever seems to be taken to solve the problems. After one time when we presented them with a list of some of our complaints, the School Board set up a Community Affairs Advisory Council in early 1993. This was to be a committee of six people selected by the NAACP and six people selected by the School Board. I was one of the representatives selected by the NAACP. There were two preliminary meetings to establish the Council and its membership. Then regular meetings were to be held monthly. After only one regular meeting, we received a letter, dated March 16, 1993, stating that the School Board had cancelled the Council. A copy of the letter that I received from the School Board announcing the disbanding of the committee is attached as Defendant-Intervenors' Exhibit 17 [omitted from J.A.]. We were also told that the Council had to be canceled because there was already a Bi-Racial Committee established by the consent decree from the school desegregation suit and this one would be illegal. We were angered and disappointed at the cancellation of the Council, but we were not really surprised as it seems that the School Board and school system do not really

want to deal with the problems that face the black students and parents. Many of us had no knowledge that there was any such Bi-Racial Committee in existence with which the Council could have conflicted. Then we found out that the annual reports which the School Board had been sending to the Court and the Department of Justice left the impression that the original Bi-Racial Committee was still functioning when in fact it had not met in years. This made the leadership and membership of the NAACP and other groups very disappointed and angry.

Excerpts from Defendant-Intervenors' Exhibit E (Supplemental Testimony of Defendant-Intervenor Thelma Harry dated April 9, 1995)

* * * *

19. After one of the meetings of a group of NAACP members and a few school board members in 1993 (see paragraph 17 of the Final Direct Testimony of Thelma Harry), Mr. George Price and I had a conversation with Mr. Tom Myrick. Things in meeting itself had been somewhat on edge because it was clear that the representatives of the black community were not going to be satisfied by more promises to look into problems, but wanted concrete steps taken to solve the problems. During this meeting, one of the issues we had raised was the fact that the Plain Dealing High School was the only high school in the parish that did not get any money for computer purchases from a program called BEEF. Plain Dealing is in the northern part of the Parish in Mr. Myrick's district. It is the only majority black high school in the parish. After the meeting, Mr. Myrick complained that we were always trying to take his seat and stated that he was not going to let us take it away from him.

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

Civil Action No. 94-1495
(LHS (USCA), CRR, GK)

BOSSIER PARISH SCHOOL BOARD, PLAINTIFF

v.

JANET RENO, DEFENDANT

v.

GEORGE PRICE, ET AL.
DEFENDANT-INTERVENORS

DIRECT TESTIMONY OF DAVID CREED

1. My name is David Arnold Creed. I am the Director of North Delta Regional Planning & Development ("North Delta") in Monroe, Louisiana. I have held this position for 14 years.

2. North Delta provides technical assistance and demographic advice to governmental bodies throughout the northeastern Louisiana region.

3. One of the services we provide is consultation concerning, and the development of, reapportionment plans. We draw redistricting maps and precinct maps for school boards, parishes, and municipal governments in Louisiana. In addition, I testified in the lawsuit of *Knight v. McKeithen*, No. 94-848-A. 2 (M.D. La. August 19, 1994), on behalf of the defendant East Carroll School Board.

4. As a result of our redistricting work I am familiar with the requirements of both federal and state law concerning reapportionment in Louisiana. In particular, I am familiar with the preclearance requirements Section 5 of the Voting Rights Act and with Act 925, the Louisiana Statute limiting the ability of local school boards to alter precinct lines.

5. Over the past two years, I have worked with several governmental entities on reapportionment projects which have involved potential conflicts between the Voting Rights Act and the precinct-splitting law. In none of these situations have the limitations on a school board's ability to split precincts prevented the adoption of a redistricting plan that met the requirements of Section 5.

6. For example, we worked with the West Carroll Parish School Board in developing its redistricting plan. West Carroll was unable to develop a reapportionment plan which met the requirements of the Voting Rights Act without splitting some precinct lines. However, after the Department of Justice precleared West Carroll's plan it was able to satisfy state law requirements by having the West Carroll Police Jury, the parish governing body, alter existing precinct lines.

7. Likewise, we worked with the Franklin Parish School Board, whose situation was similar. Franklin needed to split precincts to satisfy Section 5 requirements. We helped the Franklin Parish School Board develop new precinct maps and descriptions which it submitted to its police jury for approval.

8. In both West Carroll and Franklin Parish, the school boards paid the police juries' costs in establishing new precinct lines, which amounted to one or two thousand dollars in each case. Once the school boards agreed

to cover these costs, the police juries expressed no further reservations about adopting the precinct changes necessary for the school boards to implement election plans in compliance with federal law.

9. We also worked with the Ouachita Parish Police Jury and Registrar of Voters in drawing and describing new precincts for use by the Monroe School Board, a metropolitan district within Ouachita Parish.

10. Although municipal governments in Louisiana, as opposed to school boards, are not governed by the restrictions of Act 925, they also frequently have to rely on parish governing bodies, usually the parish policy juries, to alter precinct lines. For example, many small municipalities with single member districts have more seats in municipal elections than there are regular precincts within the borders of the municipality. This is another occasion in which police juries are frequently called upon to "split" precincts.

11. Such precinct-splitting raises few practical difficulties. To establish new precincts requires new maps, legal descriptions, and a resolution by the parish governing body. To implement them requires new polling places, or more simply the use of lockouts or additional machines at existing polling places. These efforts were the principal sources of the costs identified in paragraph 8 in West Carroll and Franklin Parishes.

12. Police juries and school boards in Louisiana also frequently adopt different single-member election districts. For example, five or six of the 11 parishes in my planning district have different election plans for school board and policy jury.

13. In sum, while I have observed several instances of apparent tension between the requirements of Section 5 of the Voting Rights Act and Louisiana's precinct-splitting statute, this tension has been fairly easily resolved by several school boards with which I am familiar.

I declare under penalty of perjury that the foregoing is true and correct.

Executed this 16th day of February, 1995 in the City of Monroe in the Parish of Ouachita, State of Louisiana.

/s/ DAVID ARNOLD CREED

DAVID ARNOLD CREED

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

Civil Action No. 94-1495
(LHS (USCA), CRR, GK)

BOSSIER PARISH SCHOOL BOARD, PLAINTIFF

v.

JANET RENO, DEFENDANT

v.

GEORGE PRICE, ET AL., DEFENDANT-INTERVENORS

SUPPLEMENTAL TESTIMONY OF DAVID CREED

14. I heard Mr. Joiner testify that he informs school boards of all of their redistricting options. I also do the same. This includes informing them about Act 925, the Louisiana statute limiting precinct splits by school boards. In helping to prepare redistricting plans based on the 1990 census, I also informed school boards that one of their options was to adopt a plan splitting precincts and ask the police jury to establish the necessary new precincts. I also informed them that if they adopted a plan with a number of seats different than the police jury, that they had the ability themselves to establish some new precincts prior to December 31, 1992.

15. In addition, I informed school boards about the Voting Rights Act, including the possibility that its requirements may conflict with Act 925. I informed clients that in such a situation federal law prevails and

claiming that they are unable to split precincts is not a valid excuse. I would not consider myself to have done my job as a consultant if I had not informed them of this matter and others.

16. I heard Mr. Myrick and Mr. Musgrove say that they relied on Mr. Joiner's statement that they could not split precincts. In my experience, this would be unusual. Board members normally ask many questions, are nearly always concerned about incumbency, and usually direct me to prepare a plan different than what I originally recommend. This is also the case with my colleagues in the other Planning and Development Districts around the state of Louisiana. For example, when I initially told the West Carroll Parish School Board that they likely would need to have a black majority district, some individual board members told me that they did not wish to be "blamed" for this and that if they had to, it would be better if it were construed to be forced by the "federal government." As I testified in my original direct testimony, this happened.

17. I heard Mr. Joiner testify about his estimates of the cost of holding elections with additional precincts. In my view, his estimates represent total costs and not costs to the local school board. Furthermore, they represent a worst case scenario in terms of total costs because they:

(1) assume separate election commissioners and supervisors for every precinct;

(2) assume that lockouts could not be used; and

(3) assume that police juries would not reconsolidate precincts.

All of these assumptions are unlikely.

18. Mr. Joiner's rebuttal testimony misses the point of my direct testimony concerning municipal elections in Louisiana. That point is that police juries in virtually all sixty-four of Louisiana's parishes have to deal with precinct splitting by municipalities. While this splitting is not prohibited by state law, it still requires local government bodies to incur the same costs and inconveniences of precinct splitting that school boards do when they must ask police juries to split precincts.

19. I heard Mr. Joiner testify about his concern about precinct splitting. In my work, I am called upon to help governmental bodies develop precinct lines. Precincts are drawn largely based on geographical concerns rather than demographic characteristics of the population. They vary widely in the number of voters per precinct and are somewhat arbitrary.

20. I disagree with Mr. Joiner's definition of gerrymandering. To me there is a difference between attempting to draw a black majority district and racial gerrymandering. The difference is that gerrymandering involves drawing voting districts in a tortuous or convoluted way in order to render contiguous pockets of minority population that cannot be connected consistent with normal redistricting principles.

21. I recently was shown the Bossier Parish School Board's proposed redistricting plan and the illustrative plan developed by Bill Cooper without being told which was which. In my opinion, neither contains districts that appear to be gerrymandered. Furthermore, I concluded that neither plan on the whole was any more "gerrymandered" in its appearance than the other. Both appeared to have districts that were sufficiently compact and contiguous.

I declare under penalty of perjury that the foregoing is true and correct.

Executed this 10th day of April 1995 in the Washington, D.C.

/s/ DAVID ARNOLD CREED

DAVID ARNOLD CREED

Excerpts from Volume I of Trial Transcript in *Bossier Parish School Board* v. *Reno*, C.A. No. 94-1495 (D.D.C.), April 10, 1995

Testimony of Plaintiff's witness Barry Musgrove—Cross Examination by the Defendants

* * * *

[41]

* * * *

Q. And you are aware, are you not, that Police Juries can change precinct lines once they have been established?

A. Basically I understand that, yes, ma'am.

Q. And there is certainly no state law requirement that would prohibit a School Board, just as any other member, or any citizen of Bossier Parish, for that matter, from requesting of the Police Jury that they change there precinct lines?

A. Restate, please?

Q. You are not aware, are you, of any state law requirement that would prohibit the School Board, or any citizen of Bossier Parish, from requesting that the—of the Police Jury that they change their precinct lines?

A. I am not aware of any such law, no, ma'am.

Q. And, in fact, that does, indeed, happen from time to time, are you aware of that?

A. I would assume so, yes, ma'am.

Q. So you would agree with me would you not, Mr. Musgrove, that there is no reason why a School Board could not develop its own redistricting plan, and if it split precincts, then go to a Police Jury with a request to

reconfigure its precincts to accommodate that plan?

MR. THORNTON: Objection, Your Honor.

THE COURT: Overruled.

[42]

MR. THORNTON: She said —

THE COURT: Overruled. Overruled.

THE WITNESS: Ms. Sardeson, I am comfortable with addressing the Bossier situation, but I am not real comfortable addressing any other parish situation. I assume that any parish can do anything that they have a desire to do.

But in our situation, our initial hope was to jointly develop a plan between the two public bodies, and when that did not come to fruition, the Police Jury said that they were going to do their own thing, and when that went out the window, then we proceeded in the other direction of retaining Mr. Joiner.

BY MS. SARDESON:

Q. My specific question to you, and I will put that in Bossier Parish then. You are not aware of any state law requirement, are you, that would have prevented the School Board, the Bossier Parish School Board, from developing a redistricting plan, or discussing developing a redistricting plan that split precincts, and if it did that going to the Police Jury to—and requesting it to reconfigure the precincts to accommodate that plan?

A. Ms. Sardeson, my response would be that my understanding, and certainly I am not a lawyer, but my understanding was that that would have been possible if we [43] jointly worked on developing precincts, but that once the Police Jury established their lines, then we were obliged to operate within the precinct lines so established by their rules.

Q. So it is your understanding that the Police Jury can't split precincts?

A. Well, I have—I have two feelings on that. One, we operated under the premise that only they could—had the authority to split precincts. Since that time, you know, I have had information from several sources that perhaps the state law prohibiting the violation of precinct lines also applies to the Police Jury.

But at the time that we were negotiating or considering all plans, it was my understanding that the Police Jury was the only body that had the authority to violate precinct lines, yes, ma'am, or to redraw. Did I—am I answering your question?

Q. Was it your understanding—are you saying that it was your understanding during the time leading up to the School Board adopting the Police Jury plan that it was not possible for the School Board to go to the Police Jury and request that the Police Jury reconfigure its precinct plan?

A. Well, I personally did not know that that was an option until after our plan had been denied by the Justice Department.

[44]

Q. But you know that that is an option today?

A. That?

Q. Do you know that the option of going to the Police Jury to request that they reconfigure their precinct lines—

A. Yes.

Q. —was an option at that time? You understand that today?

A. Yes, ma'am.

* * * *

[47]

* * * *

Q. In fact there was no discussion about the NAACP plan after Mr. Joiner said that it split precincts, isn't that true?

A. From my viewpoint, yes, ma'am.

Q. You also stated in your direct testimony that after the Justice Department denied preclearance to the School Board's redistricting plan, we were further told that we were not permitted to gerrymander for racial purposes, is that correct?

[48]

A. Restate, please?

Q. You stated in your direct testimony that after the Justice Department denied preclearance to the School Board's redistricting plan, and I quote from your direct testimony, we were further told that we were not permitted to gerrymander for racial purposes?

A. Well, if you are reading, then I assume that I said that. I believe that what I intended to convey is, again, violating of existing precinct lines by state law to gerrymander any district, whether it be for majority or minority purposes.

Q. Are you making a distinction between the precinct splitting problem and racial gerrymandering? Would you make a distinction between those two definitions?

A. Based on my knowledge I cannot make a distinction. Gerrymandering, my concept of the word is that it is an illegal use of precinct lines to configure a district that will favor either a majority or a minority situation. I have a hard time distinguishing between the two personally.

Q. Well, you stated earlier in your direct testimony that Mr. Joiner had told the board that there was a problem that the NAACP split its precincts, is that correct?

A. That is correct.

Q. And that you also stated that that was the reason why you—for you, the NAACP plan wasn't an alternative for the [49] School Board to adopt?

A. The night that it was presented, the president of the board at that time, David Harvey, asked Mr. Joiner to come in, and his response was that the plan was illegal because it violated numerous existing precinct lines that we had no authority to do. I might—may I?

James Bullers was the District Attorney who was acting as our counsel, also made the comment at that time that he agreed that should we adopt that plan that we would be sued.

* * * *

[59]

* * * *

Q. Mr. Musgrove, you identified the *Lemon* case as the district school desegregation case a few minutes ago. Isn't it true that you know virtually nothing about the school district's obligations in that on-going school desegregation case?

A. Yes. That is essentially true. I really had not heard about that case until we were called to Baton Rogue last year.

Q. You were called to Baton Rogue because my client sued the School Board to try to get it to adopt a legal redistricting plan?

A. Yes, ma'am.

Q. I would like to go back for a moment to this question of precinct splitting versus racial gerrymandering. Are you familiar with the old Bossier area of Bossier City in the parish?

A. In general, yes, ma'am.

Q. Isn't it true that in that area of Bossier City, if it weren't for the precinct issue, you think that a majority black district could probably be drawn without a [60] gerrymandering issue?

A. Restate, please?

Q. Isn't it true that in the old Bossier area of Bossier City, even if it weren't for the precinct issue, you think that a majority black district could be drawn without a gerrymandering issue?

A. If it weren't for the precinct issue?

Q. That is right?

A. Though I am not a demographer, I am aware that that area houses the most significant concentration of minority population, and as a lay person common sense would tell me that that would be as close a potential black majority district as could be constructed.

* * * *

Testimony of Plaintiff's witness Thomas D. Myrick—Cross Examination by the Defendants

* * * *

[73]

* * * *

Q. You also said in your direct that there were two schools actually physically located in your district?

A. Yes.

Q. And that—both of those schools are up in Plain Dealing, are they not?

A. Yes. Plain Dealing Elementary School, and then Plain Dealing Middle School and High School are in one location.

Q. And both of those schools are predominantly black, are they not?

A. Yes.

Q. And in fact both of those schools are over 75 percent black?

A. I couldn't answer that. I do know that they are predominantly black.

Q. Again, it has been stipulated in this case that Plain Dealing Elementary is 77.7 percent black, and Plain Dealing [74] Junior and Senior High is 76.9 percent black.

A. I would not disagree with that.

* * * *

[78]

* * * *

Q. But isn't it true, Mr. Myrick, that you actually participated in the Police Jury process?

A. No, absolutely not. I had nothing whatsoever to do with it.

Q. That, in fact, you met with Mr. Joiner, the Police Jury's demographer, in his office on five or more occasions during the Police Jury process?

A. I did not.

THE COURT: Where was his office?

MS. SARDESON: In Shreveport.

THE COURT: I asked—I didn't ask you.

MS. SARDESON: I am sorry.

THE COURT: Where was his office?

THE WITNESS: I do not know where his office is. I have never—

THE COURT: Have you ever been in Shreveport, Louisiana?

[79]

THE WITNESS: Yes, sir.

THE COURT: Have you ever been in his office?

THE WITNESS: No, sir.

THE COURT: Are you sure about that?

THE WITNESS: Absolutely.

* * * *

[86]

* * * *

Q. Mr. Myrick, you stated in your direct testimony

that it was likely you who proposed, shortly after the Department of Justice precleared the Police Jury plan, proposed to the School Board that they adopt the Police Jury plan?

A. Yes.

Q. Just go ahead and—

A. It probably was. I know that I favored it. I don't recall specifically making the motion, but that was my position.

Q. And the reason for your position, was it not, that you were afraid that the members of the School Board were going to become embroiled in a political controversy over the fact that incumbents were pitted against each other?

A. My position was that this plan had been approved by the [87] department—or had been not objected to by the Department of Justice. It seemed expedient to say that if this plan is acceptable, then why don't we accept it rather than become involved in discussions about minute changes in district lines.

It seemed a good way to say, we don't have anything else to worry about. This plan has been accepted, and we had no objection to it. And I will add, also, that a part of my thinking in the process was that it was more reasonable for the public to understand the district based on it being the same as the Police Jury.

In the past, prior to 1980 as I recall, the—both plans were the same, and the district designation was the same. Between 1980 and 1990 there was much confusion about which Police Jury district you lived in and what School Board, among the voters is what I am saying.

* * * *

[105]

* * * *

Q. Isn't it true that Mr. Price then brought his plan back before the board at the next School Board meeting on September 17th, 1992, do you recall that, the two presentations?

A. I think that that is correct.

Q. And isn't it also true that the School Board just dismissed the plan because of split precincts?

A. We chose to go with the Police Jury plan because it had [106] been approved by the Department of Justice.

Q. But it would be a fair statement, wouldn't it, in light of the comment that you just made, that you didn't even take—give the plan enough thought to find out where your own residence would be in that plan, that the School Board just summarily dismissed the NAACP plan when Mr. Price presented it?

A. I cannot speak for the whole board, but I did not summarily dismiss it.

Q. But the School Board didn't ask Mr. Joiner to conduct any further study on the plan after Mr. Price presented it, did they?

A. Mr. Joiner told us that the proposed NAACP plan split precincts. In fact he gave us a number, that I can't recall now, but it was a pretty high number.

THE COURT: Did anybody present to you during this period a plan whereby minorities would be in the majority of any election district without cutting precinct lines?

THE WITNESS: No, sir.

THE COURT: Nobody?

THE WITNESS: No, sir.

THE COURT: Including the NAACP or any other minority group?

THE WITNESS: No, sir.

THE COURT: Are you sure about that?

[107]

THE WITNESS: That is my understanding.

* * * *

[109]

* * * *

THE COURT: Was Mr. Price a part of the redistricting process of the School Board of which you are a member?

THE WITNESS: He contributed on a number of occasions and provided a proposed plan.

THE COURT: Did they cut across precinct lines?

THE WITNESS: Yes.

THE COURT: What was the reason that they were rejected?

THE WITNESS: That was one of the reasons, Your Honor.

THE COURT: What were the other reasons?

THE WITNESS: The other reason, in my opinion, was that the district was configured in a real odd way, beginning at the Arkansas state line, and extending on

down through the middle of the parish, and it created a School Board district that was not in accord with the previous practices.

Our—our procedure has always been for a School Board member to represent a certain area, and the districts that Mr. Price proposed flashed down through the middle of the parish and created a situation where a School Board member in Bossier City or the southern part of the parish would be representing people who attended a school and [110] resided in the northern part of the parish.

It would distance the voting public in a particular school attendance district from their School Board member, and that was my personal objection to it. And then we were informed that that plan could not be created with a black majority district without crossing precinct lines.

* * * *

[114]

* * * *

Q. And Mr. Price addressed the precinct split issue in the NAACP plan at that public hearing, did he not?

A. I have heard him address it, and I am not certain that it was at that particular time.

Q. In fact Mr. Price talked about the supremacy clause in his presentation, did he not?

A. I don't think that he used that term.

Q. Isn't it a fact, Mr. Myrick, that Mr. Price told the board that Mr. Joiner, the School Board's own demographer, had had conversations with the NAACP, and that Mr. Joiner had admitted that the use of the precinct law

—the state—the Louisiana precinct law, if it impeded the creation of a black majority district, that that would constitution—constitute a violation of the Voting Rights Act, a constitution of federal law?

A. I don't recall that. I recall Mr. Price's statement to the effect that federal law supersedes the state law.

* * * *

[127]

* * * *

Q. Mr. Myrick, I put back up what was marked as United States exhibit number 76-D, which is the proposed School Board plan, which is the current Police Jury plan?

A. Yes, it appears to be.

Q. Which district does Tommy Scarborough represent?

A. The blue one.

Q. That is the same as the one that you would be in if the court approves this plan for the School Board—

A. Yes.

Q. —is that correct?

A. Correct.

Q. And which district is Rick Avery in?

A. I couldn't tell you. I have no idea. I can—

Q. I am sorry, go ahead.

A. I think that I know—I couldn't answer that. I thought that I could tell you where he lived, but I don't —I am not certain of that.

Q. Mr. Myrick, would it help you to remember the conversations that Ms. Sardeson was asking you about with Mr. Joiner during the Police Jury process in which she asked if you were involved, if I were to suggest to you that Rick Avery and Tommy Scarborough were involved in some of those conversations as well?

A. With me?

[128]

Q. And with Mr. Joiner during the Police Jury redistricting process?

A. No.

Q. Would it help—

A. That is not true.

Q. Does it help you recall those conversations if I suggested that in paragraph eighty-five of the stipulations that your counsel has stipulated that on those occasions you were accompanied by at least two Police Jury members, Rick Avery and Tommy Scarborough, all of whom represent districts, portions of which could be used to create a black majority district north of Bossier City?

A. I never met with a member of the Police Jury. I never discussed the plan with them. I have never met with Mr. Joiner outside a School Board meeting to discuss this reapportionment plan.

* * * *

Testimony of Plaintiff's witness Gary D. Joiner—Cross Examination by the Defendants

* * * *

[135]

* * * *

Q. And you incorporate that input from your employers when you are drawing the plan, isn't that correct?

A. Yes.

Q. You don't inject your own personal preferences into the plan, do you?

A. No.

Q. So when you are drawing a redistricting plan, you follow the instructions of the government officials who employ you, [136] that is fairly stated, correct?

A. Yes. Unless—occasionally something happens when an elected official will ask me to do something that is just totally improper, and it happens rarely, but it does happen occasionally.

Q. And you advise them of all of the relevant state law requirements?

A. Yes.

Q. And you also advise them of all relevant options for redistricting under state law, isn't that correct?

A. Yes.

Q. Now, you had these meetings with small groups of individual incumbents during the Bossier Parish Police Jury redistricting process in 1991, correct?

A. Yes.

Q. And it has been stipulated to by the parties in this case that these meetings were not open to the public. Now let me ask you this question about these meetings. School Board member Thomas Myrick, one of the plaintiffs in this case, attended some of these meetings, did he not, during the Police Jury process?

A. Listening to testimony—if I could I would like to explain what I remember.

THE COURT: Answer the question.

THE WITNESS: I met with certain School Board [137] members, talked to them. Most of the Police Jury members came to my office, two or three at a time.

BY MR. MULROY:

Q. And Thomas Myrick—

A. I met with Mr. Myrick, and I thought that it was at my office. It may not be. I am not—I am not really sure about that, at my office.

Q. He met with you during the Police Jury redistricting process, correct?

A. I met Mr. Myrick.

Q. And discussed redistricting during the Police Jury redistricting process, isn't that correct?

A. But not in the School Board process, the Police Jury process for the Police Jury, and there is a difference.

THE COURT: There is?

THE WITNESS: Yes, sir.

THE COURT: Oh, might be.

BY MR. MULROY:

Q. So your testimony then, if I can understand it correctly—

A. Can I expand on that?

THE COURT: No. Answer questions.

BY MR. MULROY:

Q. Your testimony then is that School Board member Thomas Myrick met with you during the Police Jury redistricting [138] process to discuss the redistricting for Bossier Parish, is that fairly stated?

A. For the Police Jury, and he was certainly aware of it. Yes, I would say yes to that.

Q. Now, you did testify at deposition, did you not, that he met with you some five times in your office, did you not?

A. I don't recall. I certainly met with Mr. Myrick at various times, and other School Board members. I don't recall saying in my office. Maybe I did. I don't—of course I had almost twenty hours of deposition, too. I may have.

Q. Well, you did take a deposition in this case, is that correct, Mr. Joiner?

A. Yes, sir.

THE COURT: Just a minute, counsel. Witnesses don't take depositions. Witnesses submit to depositions.

MR. MULROY: I stand corrected.

THE COURT: Now let me show you how to do it. Bring it up here.

MR. MULROY: Bring the deposition transcript?

THE COURT: Yes.

MR. MULROY: Thank you, Your Honor.

THE COURT: Do you recall your deposition being taken on October 14, 1994?

THE WITNESS: Yes, sir.

[139]

THE COURT: In this case, by Mr. Gary Joiner?

THE WITNESS: Yes, sir.

THE COURT: And you were under oath at that time, were you not?

THE WITNESS: Yes, sir.

THE COURT: And that was in the case of Bossier—

MR. MULROY: Bossier, Your Honor.

THE COURT: Bossier Parish School Board versus Jane Reno and others in this case, right?

THE WITNESS: Yes, sir.

THE COURT: Now at any time following the redistricting process for the Police Jury, did you have any discussions with any other member—any member of the School Board?

THE WITNESS: Yes, sir.

THE COURT: With whom did you have such discussions?

THE WITNESS: When I went before the School Board, I certainly discussed that with every member of the School Board. I recall having conversations with both Mr. Myrick and with Mr. Musgrove, and with the staff of the School Board.

THE COURT: Is it your testimony today that Mr. Myrick did not come to your office?

THE WITNESS: No, sir, it is not.

[140]

THE COURT: What is your testimony? Did he come to your office or didn't he?

THE WITNESS: I believe that he did. I certainly do. I couldn't tell you the dates, Your Honor. I am not sure about that.

THE COURT: The question that you discussed with Mr. Myrick in your office was the district boundaries that had already been created for election of the School Board before there was a vote, isn't that right?

THE WITNESS: I don't recall that, Your Honor. For the School Board?

THE COURT: For the Police Jury?

THE WITNESS: For the Police Jury. That would have made sense, yes.

THE COURT: Do you recall how many meetings that you had with Mr. Myrick?

THE WITNESS: No, sir, not offhand, but I would assume that over the course of the project probably half a dozen.

THE COURT: Ten?

THE WITNESS: It could be. I really didn't keep records of who I spoke with on any—at any given time.

THE COURT: All right. Did you have occasion to call him and seek him out?

THE WITNESS: I do not recall calling him. I [141] typically work through staff.

THE COURT: Did he ever have occasion to call or contact you directly?

THE WITNESS: Yes, sir. I believe that he did on at least one occasion. Yes. I will answer that yes.

THE COURT: When he came to see you was he concerned about his own district alone?

THE WITNESS: I would say that I have never been in a meeting with an incumbent when they were not concerned about at least where their boundaries were. And I would say that that would extend to Mr. Myrick.

THE COURT: He was concerned about his own district?

THE WITNESS: I would say so, yes. Whether he said that verbally or not, I don't know.

THE COURT: And he came to see you what the jury—the Police Jury plan would look like in terms of its boundaries?

THE WITNESS: I would say so, yes.

THE COURT: And he left you with the impression that the Police Jury plan would ultimately be the School Board plan, right?

THE WITNESS: Yes, sir.

THE COURT: Did you have any occasion to discuss with Mr. Myrick, or Mr. Jerome Darby, the Police Jury plan?

[142]

THE WITNESS: Yes, sir. I certainly spoke to Mr. Jerome Darby about it on several occasions.

THE COURT: Did either of them ever have any—give you any indication that they wanted a black majority district?

THE WITNESS: No, sir.

THE COURT: As a matter of fact they indicated just to the contrary, didn't they?

THE WITNESS: Yes, sir. In the context —

THE COURT: You answered my question.

THE WITNESS: Okay.

THE COURT: On how many occasions did you talk with Mr. Darby?

THE WITNESS: Several. I don't remember how many, but several. Both in meetings, before and after meetings, at my office. And by telephone.

THE COURT: Now wait a minute, sir. Did you have any individual conversations with members of the Police Jury about the drawing of black majority districts?

THE WITNESS: Individual conversations?

THE COURT: No. Any conversations with individual members of the Police Jury about drawing black majority districts?

THE WITNESS: Not that I recall.

THE COURT: All right, counsel. You can have this [143] back.

MR. MULROY: Thank you, Judge.

BY MR. MULROY:

Q. If I may just quickly follow up on one point that you just made, Mr. Joiner, as Judge Richey was questioning you. Police Juror Jerome Darby during the Police Jury redistricting process is a black Police Juror, is that correct?

A. Yes, he is.

Q. Mr. Darby didn't affirmatively tell you that he opposed the creation of a black majority district during the process, did he?

A. Oh, no.

Q. In fact he did ask about the possibility of creating a black majority district, did he not?

A. It was more involved than that.

Q. But the answer would be yes, he did ask about the posibility of creating a black majority district, is that correct?

A. Yes. The answer to that would be yes.

* * * *

[149]

* * * *

THE COURT: I asked you, what was the highest percentage of African Americans in a proposed district that you generated on your computer when considering alternatives for elections to the School Board?

THE WITNESS: In a complete plan it was probably not over thirty percent, thirty or forty percent.

THE COURT: How about Police Jury?

THE WITNESS: The same. I doubt that it was that high.

THE COURT: Would it be higher in the School Board? They are the same, aren't they?

THE WITNESS: Yes, they are. It would be the same.

THE COURT: Okay. So you got up to thirty or forty percent?

THE WITNESS: Maybe.

THE COURT: Well, maybe. Do you know? You did it, didn't you?

THE WITNESS: Yes, sir, but it has been a long time, and those plans were destroyed in a computer catastrophe in my office.

THE COURT: Well, did you give them—what program did you use? Autocad, or Word Perfect, or Microsoft Word, or what?

[150]

THE WITNESS: No. I used Geodistrict from Geographic Data Technology, and GIS Plus from Caliber Corporation, and the problem was that I was backing it up, so my back up was blown away when my—

THE COURT: Your back up was what?

THE WITNESS: My back up sort of self destructed.

THE COURT: Was it on tape or diskette?

THE WITNESS: Yes, sir, it was on tape.

THE COURT: What about the hard drive?

THE WITNESS: It went down, too. We had a power failure at the worse possible moment.

* * * *

[151]

* * * *

MR. MULROY: And just for the purposes of clarification, Judge, the United States does not dispute that it is impossible to draw two black majority districts to actually—

THE COURT: Impossible did you say? You don't want to dispute the fact that it is impossible to draw two black [152] majority districts?

MR. MULROY: Without splitting at least a single

precinct. We do not dispute that in order to go from the forty-five percent range up over to the fifty percent range for the two districts that it might be necessary to split a single precinct. It is our contention that there are ways for School Boards in Louisiana, including this School Board, to handle that situation, and that—

THE COURT: Without—by means of splitting just—not more than one precinct, is that right?

MR. MULROY: No. Actually Judge it is our—

THE COURT: How many precincts are going to have to be, quote, split, unquote?

MR. MULROY: To get one black majority district in the City of Bossier, fourteen.

THE COURT: All right. How many to get two?

MR. MULROY: Twenty-seven.

THE COURT: All right. Do you agree with that?

THE WITNESS: Yes, sir.

THE COURT: Are you the source of that information?

THE WITNESS: No, sir. They had someone else do it, but I verified it.

THE COURT: And you verified it on your computer?

THE WITNESS: Yes, sir.

THE COURT: Even though it crashed you still [153] remember?

THE WITNESS: That is after that.

* * * *

[155]

* * * *

Q. Would you agree with the statement that any plan at all, whether black majority districts or not, which in any significant way deviated from the Police Jury plan, would inevitably split at least one precinct somewhere?

A. I haven't done a test to test all of them. I don't think—I don't think that you—I know that you could not have another plan that was as strong as this one without splitting precincts.

[156]

Q. How long would it have taken you to figure out whether any other alternative, which is significantly different from the Police Jury plan, in any way, black majority or otherwise, was possible without splitting precincts?

A. Several hours at least.

Q. Several hours?

A. At least.

Q. All right. Now, when the School Board—strike that.

When the School Board began its redistricting process, it didn't consider it a foregone conclusion from the git-go that it would adopt the Police Jury plan during its 1992 process, is that correct?

A. That is correct, they did not.

Q. In fact it actively considered the idea of going with another plan, correct?

A. Yes.

Q. Indeed when the School Board first hired you in May of 1991, didn't you estimate that your redistricting work would take 200 to 250 hours?

A. If they wished to pursue another course, yes.

Q. Doesn't it necessarily follow that from the start the School Board was at least considering the idea of adopting a plan which split at least some precincts?

A. No.

Q. Now, as one of the reasons that the School Board has [157] given in this case for adopting the Police Jury plan over alternatives which provide black majority districts, the School Board stated that it had no authority to change precincts, is that correct?

A. Would you repeat that, please?

Q. Sure. When the School Board gave a reason for not adopting—for adopting the Police Jury plan over alternatives which provided minority districts, one of the reasons that it gave was that it had no authority to change precincts, is that correct?

A. Yes. Under Louisiana statute seventeen seventy-one three E two B, I think.

Q. And for that reason it did not give consideration to the NAACP plan as a viable plan, is that correct?

A. That is correct.

Q. But it has been stipulated to in this case that it is quite common for parish School Boards in Louisiana to draw a redistricting plan different from the respective Police Jury redistricting plan.

In fact, isn't it true that you testified at deposition that out of the nine plans that you have worked—nine parishes in which you have worked in which the School Board and the Police Jury had the same number of districts, five had different plans?

A. Yes, that is correct.

* * * *

[165]

* * * *

Q. Let me ask you this question. It was your practice to fully inform your clients, including the School Board, about all options that they would have, including options regarding the changing of precinct lines, is that correct?

A. Yes.

Q. And that would include—strike that.

Louisiana law provided, did it not, that after January 1st, 1993, precinct consolidations, putting them together, could be made, reducing the number of precincts in the parish parish-wide, and quote, substantially, unquote, reducing election costs, is that a fair statement?

A. That is true. As a matter of fact, I am currently engaged in a project with the Police Jury to consolidate precincts.

Q. But they haven't finished consolidating precincts yet, have they?

A. No, they have not.

Q. And it has been what, four years since the Police Jury originally passed this plan?

A. There was a moratorium on precinct—on changing any precinct lines in the State of Louisiana for approximately two years. January 1st, 1994, they can change them, and it will go on until just before the next Census.

[166]

Q. Didn't you just testify that after January 1st, 1993, precinct consolidations could be made?

A. It could be 1993. There was a moratorium for about two years.

Q. So it has been two years, and the Police Jury still hasn't bothered to consolidate these precincts, is that right?

A. It is totally up to the Police Jury.

Q. If election costs were really a big concern on this precinct issue, it would be in the Police Jury's and the School Board's interest to reconsolidate precincts as fast as possible, right?

A. Part of the problem—yes. Part of the problem is this procedure.

Q. You answered my question, yes. Do you need to explain your answer, or is it yes?

A. I would like to. I would say yes, and I would also like to explain.

Q. So in order to answer the question whether or not it would be in the Police Jury's and School Board's interests to reconsolidate as soon as possible, yes is not sufficient, you would need to explain that?

A. I would like to.

Q. Please.

A. Certainly it is in their best interest, because it [167] reduces the cost of elections. The average costs of elections per precinct in the State of Louisiana is between $850 and $900. According to the Commissioner of Elections Office.

If the Police Jury in Bossier Parish goes ahead and consolidates precincts as they are now, and this case is still pending, then it would be a wash. It would be a useless waste of public money.

Q. Well, since you raised this figure of how much election costs are per precinct, let me ask you a question

about that. School Board elections in Bossier Parish are usually held in the fall of even numbered years, correct?

A. Okay. I will go along with that.

Q. And that is when congressional elections are held, correct?

A. Yes.

Q. You testified that election costs are about $800 per precinct for elections, is that correct?

A. That is what the State of Louisiana told me.

Q. But you did not communicate—strike that.

Isn't it true that that figure includes the costs that are borne by the State of Louisiana?

A. Yes. If the State of Louisiana participates in the election. Now it is possible that the School Board elections may be held at a different time.

[168]

Q. If the School Board elections—the School Board elections would normally be held at the same time as congressional elections, we just agreed to that, is that correct?

A. Yes.

Q. Now, isn't it true that under Louisiana law that at least half of the cost of such elections are borne by the State of Louisiana?

A. It depends entirely on the number of races being held. There is a formula, and I am not aware of the formula. I cannot recite the formula, but yes, you are right, they do get state assistance. There is currently a bill on the Louisiana state legislature that may prohibit a certain amount of that if it passes.

MR. MULROY: Judge, at this time I would like to ask the court to take judicial notice of certain Louisiana statutes regarding election expenses, and just what the formula is that Mr. Joiner is referring to. For the purposes of notifying counsel, opposing counsel, I am refer to Title 18, Sections 14.1(a)—1400.1(a), 1400.2(a), and 1400.3(a), and without belaboring the point further, I would simply like to ask permission to approach to give this statute to the Clerk.

THE COURT: Without objection you may do so.

MR. MULROY: Thank you, Judge.

[169]

MR. THORNTON: Do you have a copy for me? I didn't bring my entire statute.

THE COURT: You can get it up in the library.

MR. THORNTON: Louisiana statutes?

THE COURT: Sure.

MR. MULROY: I would be happy to do that, Mr. Thornton.

THE COURT: We have every state code in the country here.

BY MR. MULROY:

Q. You said before that you could have a single, just a single black majority district inside Bossier City by creating only fourteen new precincts, right?

A. Yes.

Q. And it would also be the case that in such a case the precincts would be all within Bossier City, primarily along the river, isn't that what you testified to?

A. I believe that that is correct.

Q. Isn't it also true that one polling place can be used for two different precincts in Louisiana?

A. Yes.

Q. And that in such a case Louisiana law allows the parish to reduce the number of polling place officials to as low as two commissioners per precinct?

A. It is up entirely to the Commissioner of Elections [170] Office.

Q. Isn't it actually up to the parish—

THE COURT: He is probably a friend of Governor Edwards.

THE WITNESS: Soon not to be Governor Edwards.

BY MR. MULROY:

Q. Isn't it actually up to the Parish Election Board?

A. They can—the Registrar of Voters and the Clerk of Court maintain most of that information. I am not either one of those, so I would rather not testify to that.

MR. MULROY: Judge, at this time I would like to ask the court to take judicial notice of some other Louisiana statutes that describe this issue and establish that in such a case—first of all, you can consolidate polling places across precincts, and that in such a case you can reduce the number of polling place officials to as low as two commissioners per precinct.

THE COURT: Very well.

MR. MULROY: The statute—

THE COURT: Without objection it will be received.

MR. MULROY: Thank you.

THE COURT: Next?

BY MR. MULROY:

Q. These measures that I am talking about would reduce election costs, would they not?

[171]

A. If they were implemented, yes. However, just because you combine two polling places in one precinct does not mean, arbitrarily, that you reduce total costs, because you are probably going to have a machine for each precinct. So you would have machine costs, too.

Q. Did the School Board direct you, prior to October 1st, 1992, to do a comprehensive study of these issues to see just how much election costs could be reduced?

A. No. Because it varies, and no, they did not.

Q. Now, isn't it further true that you can implement precinct splits by using additional voting machines, or by using lockouts on voting machines?

A. You can use lockouts, but it depends on the quality and age of the machine.

Q. Now as to the use of these additional voting machines or lockouts, these are measures which need only be taken when there is a School Board election under this scenario, correct?

A. In its simplest terms, yes.

Q. And assuming that School Board elections are held once every four years, there are going to be at most two more elections between now and the next redistricting, isn't that fairly stated?

A. Yes.

* * * *

Excerpts from Volume II of Trial Transcript in *Bossier Parish School Board* v. *Reno*, C.A. No. 94-1495 (D.D.C.), April 11, 1995

Testimony of Plaintiff's witness William T. Lewis—Cross Examination by the Defendants

* * * *

[8]

* * * *

Q. How many regular high schools are there in Bossier Parish?

A. Six.

Q. And one of them, Plain Dealing Senior High School is seventy-nine percent black according to that report?

A. Close.

Q. So by drawing six attendance areas and maintaining those in the school district, you come up with a school that is seventy-nine percent black?

A. Correct.

Q. And that high school is up here in Plain Dealing in Mr. Myrick's district?

A. Correct.

Q. How many regular elementary schools are there in Bossier Parish?

A. There are sixteen.

Q. And there are also attendance areas for elementary schools?

A. That is right.

Q. And four of those schools are predominantly black aren't they, Mr. Lewis?

A. Correct.

[9]

Q. And those are Bossier and Butler Elementary?

A. Right.

Q. And those are down in the City of Bossier?

A. Correct.

Q. Which is down in this area which is marked with the district seven and eight area on U. S. exhibit 76 D?

A. Correct.

Q. And Plain Dealing Elementary also is predominantly black?

A. Correct.

Q. And that is back up here in Plain Dealing in Mr. Myrick's district?

A. Right.

Q. And Plantation Park Elementary is also predominantly black, is it not?

A. I am not going to say offhand that it is, but it is close.

Q. All right. So by drawing sixteen attendance areas and maintaining those for elementary schools, you come up with three or four that are predominantly black?

A. Yes.

Q. And the reason for that is it not, Mr. Lewis, that when you—when you divide these areas, it is the com-

position of the neighborhood or community that dictates the racial composition of the school in your view?

[10]

A. We believe in the neighborhood school system.

Q. All right. Now the assignment of faculty and staff to schools is in your control, is it not, or that of the school district?

A. That is correct.

Q. It doesn't depend on where they live, or their neighborhoods?

A. No.

Q. And after that report that you signed and made to the court, your full-time teaching staff, including principals and assistant principals, was just under ten percent African American?

A. That is correct.

Q. And by the way, can I call these teachers as a form of short reference, which I believe is the practice that you follow in that report?

A. Correct.

Q. Let's talk for a moment about the assignment of teachers to those majority black schools that we identified a few minutes ago. Plain Dealing Middle and Senior High School at that time had sixteen white teachers and twelve black teachers, which made the teaching staff there over forty percent black?

A. Right.

Q. And that is more than four times the district-wide [11] average?

A. Correct.

Q. And Bossier Elementary had six white and five black teachers, which made that composition about sixteen percent black?

A. Close.

Q. And Butler Elementary had four white teachers and ten black teachers, which made that composition over seventy percent black?

A. Correct.

Q. And that is seven times the district average?

A. I agree with you. I mean I am not disagreeing with what you are saying. That is probably true.

Q. Well, you are welcome to reference the report if you have any doubt about my numbers, Mr. Lewis. You believe—this is not an accident is it, Mr. Lewis?

A. No.

Q. These are deliberate—these proportions are deliberately assigned by the Bossier Parish school district?

A. Between the school and the principal—between the district and the principals, yes.

Q. And isn't it true, Mr. Lewis, that at your deposition that one of the reasons that you gave for putting black teachers together in concentrations in schools over their representation generally on your staff is that—

[12]

MS. BRANNAN: And I quote, Mr. Thornton, from page seventy-eight of the deposition.

BY MS. BRANNAN:

Q. —that black teachers sometimes feel uncomfortable when there are not many other black teachers at a

school with them, and they feel more comfortable when there are others, isn't that correct?

A. That is not the primary reason. That is a reason, but that is not the primary reason.

Q. And you believe that the primary reason that you think that the black community wants role models in the form of black teachers—

A. That is correct.

Q. —in their schools?

A. They have expressed that to us many times.

Q. And so you deliberately respond to that request of the black community by disproportionately assigning black teachers to black schools?

A. That is correct.

Q. Mr. Lewis, isn't it true that an early order of the court in the *Lemon* case required the Bossier District to maintain a Biracial Committee?

A. Yes.

Q. And it was to be comprised of black and white community members?

[13]

A. Yes.

Q. And to recommend to the School Board ways to achieve and maintain unitary status and improve education?

A. I don't know that that was the original intent, but I am assuming that it was, to make sure that we did maintain the proper rules and regulations.

Q. That committee stopped meeting in 1976, didn't it?

A. Correct.

* * * *

[15]

* * * *

Q. Isn't it true, Mr. Lewis, that in this document that you [16] submitted to the court in the spring of 1994, under section 9-A there you reported, and I quote, the Bossier Parish School Board does have a Parish Biracial Committee available?

A. That is correct.

Q. And that wasn't true, was it?

A. Well, it just wasn't active. It doesn't mean that it was disbanded. It just wasn't active.

Q. Well, it hadn't met since 1976 except for the few short meetings that we just discussed in early 1993, isn't that true?

A. That is correct.

* * * *

Testimony of Plaintiff's witness William T. Lewis—Redirect Examination by the Plaintiff

* * * *

[21]

* * * *

Q. The court asked you, Mr. Lewis, about attendance zones. When you draw —

THE COURT: Now you are interjecting a new term of art.

MR. THORNTON: Attendance lines.

THE COURT: Whatever.

BY MR. THORNTON:

[22]

Q. When you draw attendance lines, do you also give those to the federal courts?

A. Yes, sir.

Q. All right, sir. That is a part of the obligation, and that is done?

A. Yes, sir.

Q. Have you had anybody complained about those lines?

A. No, sir.

Q. As a matter of fact, in the *Lemon* suit that you were asked about, Mr. Lewis, have you been sued, or had motions or petitions filed against the Bossier Parish School Board over the last ten, twelve or fifteen years?

A. No, sir.

Q. Now, you were asked about the black teachers, and you said that somebody had suggested that black

teachers ought to be assigned to black schools to serve as role models for the young students, is that correct?

A. That is correct.

Q. Who has asked you to do that?

A. Mr. Price and other groups of the black community. They felt like, and I feel the same way, that black kids need good black role models. And the people in Plain Dealing, for example, would go crazy if we took all of their black teachers out of that school and spread them out throughout the parish, because the school is majority black.

[23]

Q. So you were doing this because someone in the black community was saying that that is what the black community would like for you to do?

A. Yes, sir.

Q. All right. Now the court asked you a question about some of the schools that are very predominantly black. It didn't ask you the question that I would like to ask you. Is it not a fact that there are some private schools that opened up in some of those areas?

A. Yes, sir.

Q. And that the private schools are predominantly if not all white?

A. Yes, sir.

Q. Is there anything under the law that you can do about that?

A. No, sir.

Q. Now, you have tried to recruit black teachers, have you not?

A. Yes, sir.

Q. Would you tell the court, if it is true, that you have tried harder to recruit black teachers than white teachers?

A. That is correct, we have.

THE COURT: Why?

THE WITNESS: Why? Because we need black teachers in our school system. We need good black role models for our [24] black kids. They need someone to look up to.

I was personnel director for Bossier Parish for six years, from 1980 to 1984. When I would go to the colleges and universities throughout Louisiana, Texas, Mississippi and Arkansas, you would find 120 to 130 teachers graduating every year. A large number of those people being black. Today you go to them, you don't find many people in education any more. They are just not going into it.

The black—the young black people have greater opportunities in other places rather than teaching now, and our salary scale in Bossier Parish—we are actually a bedroom community for Shreveport. Most of the people work in Shreveport, and a lot of them live over there, but they have a tax basis quite a bit greater than ours. Therefore, they pay anywhere from three to $5,000 a year more than what we can.

We can't hang on to our good black teachers in our parish, because they will go over to where they can make the most money. You can't blame a kid coming out of college for wanting to go where the money is. Their start—the difference between our pay and what they make is more than what I made when I started for a year.

So there is quite a bit of difference in today's society. Money is the key to a young person as far as their goals are concerned. And so they are going to go to a school [25] system where they can make more money than they will teaching in Bossier Parish. Although we have got the best school system in the state, they are still going to go where the money is.

THE COURT: What was your pay?

THE WITNESS: When I started teaching?

THE COURT: No, as superintendent?

THE WITNESS: As superintendent, 65,000, and the man across the river makes over 100,000. So there is quite a bit of difference there. Of course they have got more students than we do. They have got about 55,000, we have got about twenty-two. So there is a difference. I wouldn't swap with him for anything. We have got a better school system than anybody else.

THE COURT: What are your SAT scores?

THE WITNESS: We don't give the SAT. We give the ACT scores, and it ranks nationally with the national results, close to the national results.

BY MR. THORNTON:

Q. Have you ever asked any of the members of the black community in Bossier Parish to help recruit black teachers?

A. Yes, sir, we have.

Q. Who? Who have you asked?

A. We have asked Mr. Price and other people. Mr. and Mrs. Harry have gone before. Mr. and Mrs. Martin. People in the [26] community.

People that used to work for the school system. One of the things, and I kind of resent this, because I have never had a lot of difficulty relating to people when I was in personnel, but they said that a white person could not recruit a black teacher to a school system.

Well, in order to try to help in that light, we have black administrators, or supervisors, or principals, or whatever, and community members, to go along with us to help recruit, and we still do not get the numbers that we would like.

Now, we get four or five black teachers every year, but we have four or five leaving every year to go next door to teach. As a matter of fact, after school started this year, the school system next to us took four of our black teachers from one of our black schools.

I can't do anything about that. It is their choice to leave. And for us to try to get someone to come in then and take their place, they are not there. So it gives us a very difficult problem. I mean it is a terrible situation for us to be in knowing what we want to do and not being able to do it. And we want good role models for our black kids.

* * * *

Testimony of Government's witness Jerome Darby—Cross Examination by the Plaintiff

* * * *

[38]

* * * *

Q. I have just a few questions to ask, if you please. You are a member of the Police Jury of Bossier Parish, are you not?

A. Yes, sir.

Q. You first ran for that office in what year?

A. 1983.

Q. And was that in a district under the old plan that was in existence from the 1980 to the 1990 census?

[39]

A. Yes, sir.

Q. All right, sir. And when you first ran in 1983, did you run from a district that had a majority white population?

A. Yes, sir.

Q. Do you remember the composition, racially, of that district?

A. The composition was about thirty, thirty-seven percent black

Q. All right. A little—all right, thirty-seven percent. And in 1983 when you ran for that post, how many opponents did you have, and what were their racial designations?

A. Excuse me?

Q. Who did you run against?

A. The incumbent who was black, and also a white opponent.

Q. The black opponent was Johnny Gipson, was it not?

A. Yes, sir.

Q. That is G-i-p-s-o-n, isn't it?

A. Yes, sir.

Q. And he had been elected before you to the Police Jury?

A. Yes, sir.

Q. So in that district you took on the incumbent and another white—and a white candidate?

A. Yes, sir.

Q. All right, sir. Did you win that race?

A. Yes, sir.

[40]

Q. Now, was race an issue in that political campaign?

A. Was it an issue?

Q. Yes. Did you make it an issue?

A. No, sir.

Q. Do you know of anybody else who made it an issue?

A. Yes, sir.

Q. Who?

A. My white opponent.

Q. All right, sir. But you won anyway?

A. Yes, sir.

Q. All right. Now you ran again in 1987, did you not?

A. Yes, sir.

Q. Who were your—the same district? From the same district?

A. Yes, sir.

Q. Was the composition—the racial composition roughly the same again, about thirty-seven percent black?

A. Yes, it was.

Q. And against who did you run?

A. The same two opponents.

Q. Mr. Gipson?

A. And Mr. McDaniels.

Q. And McDaniels, all right. And who won that race?

A. I did.

Q. Okay, sir. Now the Police Jury then reapportioned, and [41] you ran under their present plan, which is also the same redistricting proposal of the School Board, is that correct?

A. Yes, sir, that is correct.

Q. You ran in 1991?

A. Yes, sir.

Q. All right, sir. Who were your opponents?

A. I was unopposed.

Q. You filed and no one ran against you?

A. Yes, sir.

Q. So you swept into office without opposition?

A. Yes, sir.

Q. Now then, sir, do you—how many seats do you believe that African Americans or blacks ought to have on the Police Jury or on the School Board?

A. At least two to three.

Q. Why, sir?

A. One is because of the fact that by me being—serving the Police Jury for three terms, I have never been able to get white support, regardless. No matter how qualified I am, my white colleagues never support me, under no circumstances. I felt that if we had at least two to three minorities on the Police Jury that it would definitely be a lot different.

Q. Do you believe that you are entitled to two or three because of the proportion of African Americans to the entire population?

[42]

A. Yes, sir.

Q. All right. Has somebody told you that the Voting Rights Act provides that you should be elected to office as a race in proportion to your numbers to the population?

A. Yes, sir.

* * * *

[44]

* * * *

Q. Mr. Darby, I am showing you an exhibit. It is number 5, I think. It is on the blue there, Mr. Darby. What exhibit do I call it? Exhibit number—exhibit number 5. Now, that exhibit purports to be the minutes, an extract of the minutes of a Police Jury meeting in January of 1994. Would you read it, sir, or have you read it?

A. The top?

[45]

Q. Just read it to yourself right quickly. Did you attend that Police Jury meeting?

A. Yes, sir.

Q. The Police Jury meeting was, in part, a meeting about whether it wanted to redraw its plan, and there is some controversy about what it is saying, but do you recall that meeting?

A. Yes, sir.

Q. All right. And in that meeting, the Police Jury of Bossier Parish decided what?

A. That it stood by its original reapportionment plan.

Q. Okay. And it even quotes you as stating that you are concerned that if the Police Board and Police—the School Board and the Police Jury have different district lines, it would be confusing to the citizens of Bossier Parish?

A. Yes, sir.

Q. Did you make that statement?

A. Yes, sir.

Q. All right. However, Mr. Darby indicates that he supports the Police Jury's original plan, is that correct, sir?

A. Yes, sir.

Q. Did you say that?

A. Yes, sir, I did.

Q. So the minutes are accurate?

[46]

A. That is accurate.

Q. And that was as late as January 11th, 1994, was it not?

A. Yes, sir.

Q. Do you still stand by those statements?

A. That I support the Police Jury plan as of now?

Q. Yes?

A. No, sir. May I explain?

Q. By all means, sir.

A. Okay.

Q. The Judge would probably like it.

A. In January 11th of 1994, at that time I wasn't aware of the information as far as you could draw minority districts. And what I was saying, and what I have always said, that I wanted to see both, since both bodies have twelve members representing the same people, that we have the same district lines.

And that is what I was saying in that meeting. At the time—at that time I hadn't seen where you could do minority districts. So what I was saying is the fact that you could—that I supported what we had in place because of the fact that I was concerned about what it would do as far as jeopardizing that one seat that we did have.

Q. And you didn't know in January of 1994 that the NAACP plan had been drawn to provide two minority —protected minority districts? You didn't know about any such plan?

[47]

A. I didn't keep up with it, sir.

Q. All right, sir. Now, you have contended that blacks are discriminated against in the school system in your narrative statement?

A. Yes, sir.

Q. That is a pretty broad statement, sir. Do you have any instances or any names to supply the court?

A. I have several instances if you would like me to share some of them.

Q. Well, if the court wants it in a moment. Let me ask you this. Did you report those to the school system?

A. Yes. Not to the administration. Usually it was always directly to that school.

Q. All right. Whom did you report these to?

A. Most of the time it would be like the school principal.

* * * *

[48]

* * * *

Q. If I told you that any child, black, white, any child, that was accused of an infraction that might result in expulsion or suspension, that any such child had the right to a hearing in which he or she could bring anyone they wanted there in his or her behalf? Do you know that to be true?

A. Yes, sir.

Q. All right. Do you know who generally presided over those hearings?

A. Who generally presided over those hearings?

Q. Um-hum?

A. Probably it would be the school attendance officer.

Q. Well, do you know a Mrs. Betty McCauley?

A. Yes.

Q. Did you know that she presided over those for some [49] years?

A. She hasn't always presided over them.

Q. No, she hasn't.

A. At the time that you asked me about the principal?

Q. Yes?

A. That was Mrs. Owens.

Q. Oh, okay.

A. And at the time it was Ms. McCauley, she was also the coordinator at the very school we are talking about.

Q. All right. Ms. McCauley is black, is she not?

A. She is.

Q. And at some point along the way a man named Joshua Bryant —

THE COURT: How do you spell that?

MR. THORNTON: B-r-y-a-n-t, J-o-s-h-u-a, I think.

THE COURT: All right.

BY MR. THORNTON:

Q. Mr. Bryant?

A. Yes, sir.

Q. And he presided over many of these hearings, did he not?

A. I couldn't answer that, Mr. Thornton, because I haven't gone to that degree. The degree that I have been involved with has been strictly for me, as a Police Jury, to represent parents in my district. It wasn't to that level. It was always directly with the school.

[50]

Q. Did you know Mr. Bryant?

A. Yes, I do.

Q. What race is he?

A. He is black.

Q. All right. Now then if I told you that neither Ms. McCauley nor Mr. Bryant, in looking over these—in presiding over these hearings, could expel or suspend, that only the superintendent could, did you know that to be true?

A. No, sir, I didn't.

Q. And as the superintendent has testified in his narrative statement, when he makes a decision to accept or reject the recommendation for expulsion or suspension, that he doesn't even know the race of the student, are you prepared to deny that?

A. No, sir. If you tell me that that is true, I will accept that, sir.

Q. All right. Now, having learned all of this, can you think, or would you like to tell the court or us, for that matter, how you believe that we could make the suspension or the discipline system any fairer? What should we do that we are not doing?

A. What should you do that you are not doing?

Q. Yes, sir?

A. One of the things, I think, is the fact that even though you have those people in place, they haven't always been in [51] place. Ms. McCauley was one time the principal of a school. When I have gone for parents it has always been to resolve it before it did get to that, and so the level that I have always dealt with principals on was the level of the kids having problems in the classroom, as well as whether the teacher didn't quite understand what was going on with that child. It has always been on that level. It has never been to the level that you have described at this moment.

Q. Okay. Would you fault our hearing system as being unfair?

A. Being unfair?

Q. Yes? Would you say that it is unfair?

A. Just because you have two black people that are involved?

Q. No, sir. Just because we have full and open hearings, and just because we don't make race an issue?

A. Yes, sir.

Q. Is that fair enough?

A. I guess it is.

Q. Then can you think of any reason why more—proportionately more black children are disciplined than white?

A. Can I think of any reason?

Q. Yes? If the hearing system is fair, what would be the reason?

[52]

A. Well, there are so many other variables that you have to take into consideration. Each case is different.

There is information that sometimes might not always get—they might not get all of the information correctly.

A lot of things goes on that—before it even get to that. So before I make a statement like that, I would have to be able to look at all of the facts, and look at how it takes place, and all of the proper information to get to that hearing.

* * * *

Q. Now, you state that you have tried to forget about race and politics, and that you concentrate on issues?

A. Yes, sir.

Q. You even state that you consider yourself to represent all of the constituents of your district, regardless of race, correct?

A. Yes, sir.

Q. And you have made that a theme in your campaigns, have you not?

A. Yes, sir.

Q. Do you think that that is proper to put race behind and talk about issues and represent the entirety of a [53] constituency?

A. Do I feel that that is proper?

Q. Yes?

A. Yes, sir.

Q. Could it be, sir, in your opinion that that may be the reason why you got so many white votes which enabled you to win in that district?

A. To win in my district?

Q. Exactly? Could that be the reason, because you didn't make race an issue?

A. Well, for me as a black person, race has always been an issue, all thirty-seven of my years, regardless. I don't make the issue, but it is an issue, something that I live with.

Q. But you got a lot of white votes, didn't you?

A. Well, when I go back and look at the statistics, it was based on that black base, which is the black community is the one that really helped me to be successful. I did get some white votes, but I wouldn't say a lot of white votes.

Q. Well, Mr. Gipson ran. Didn't he get some black votes?

A. He sure did.

Q. Okay. But in the overall, in the end, you got a lot of white votes which took you over fifty percent, didn't you?

A. Yes, sir.

Q. And you won?

[54]

A. Yes, sir.

Q. And you didn't make race an issue, did you?

A. No, sir.

Q. And I am asking you now sir, maybe when you didn't make race an issue, maybe that is the reason that you got some of those white votes, hum?

A. Yes, sir, but I have never made it an issue.

Q. All right, sir. And I congratulate you.

THE COURT: How many African Americans, sir, reside and are eligible to vote in your district?

THE WITNESS: At the time in 1983, it was about 500.

THE COURT: Wait a minute. 19?

THE WITNESS: 83.

THE COURT: 83?

THE WITNESS: Yes, sir.

THE COURT: Out of 500 voters?

THE WITNESS: Registered black voters.

THE COURT: And how many white?

THE WITNESS: I can't say, Judge, but it was more than 500. It has been a pretty good while, but it was a large number.

THE COURT: When was the last time that you were elected?

THE WITNESS: In 1987. Well, the last time I was [55] elected, 1990.

THE COURT: And what was the percentage of blacks and whites at that time, registered voters?

THE WITNESS: At that time I believe it was twenty-six percent.

THE COURT: That doesn't answer my question. How many black voters were there then, 1990, and how many white voters, sir?

THE WITNESS: I don't recall. I can't tell you.

THE COURT: Well, which was the majority?

THE WITNESS: White was.

THE COURT: How much of a majority?

THE WITNESS: About sixty percent.

THE COURT: Sixty/forty?

THE WITNESS: Yes, sir.

THE COURT: And what was your margin of victory?

THE WITNESS: For my last election?

THE COURT: In 1991?

THE WITNESS: Well, that was the election that I was unopposed, so I didn't have anyone running.

THE COURT: What was your margin of victory, even though you were unopposed?

THE WITNESS: A hundred percent, I guess.

THE COURT: All right.

* * * *

Testimony of Government's witness Jerome Darby—Redirect Examination by the Government

* * * *

[56]

* * * *

Q. Mr. Darby, there is a military base in your district, is that correct?—

A. Yes, sir.

Q. Does that have any effect on your ability to be elected in a white majority district?

A. Yes, sir. In fact it has a big difference. That is what makes, I think, my election a lot more different than the whole area as far as Bossier Parish, because we do have a large military area in the Barksdale Air Force Base which they count that in my district, which makes it look like I have a large number.

But mostly military voters, they don't vote, because they live not necessarily—they are not registered to vote there, and they live up—not live other place, but basically as far as where they are registered it is not there. I have received some military votes as well.

Q. Well, of those military voters in your district who do vote in the local election, is there any reason to think that they might be more or less likely to support you as a black candidate?

[57]

A. One of the things from my own experience is that they are more open minded than most people that do live in Bossier. I think that a lot of it has to do with the exposure and being more open minded.

Q. When you refer to exposure, do you mean the environment in which military people live in, on base or in off base housing, as opposed to the rest of the parish?

A. Well, that and also coming from different backgrounds of the country where people are a lot more open minded.

Q. So most of this military population is not from Bossier Parish?

A. No.

Q. They would not be from Bossier Parish?

A. No. Basically, they are from all over the whole country.

Q. In terms of whether or not they live in an integrated environment compared to the other white residents of Bossier Parish, do you have any knowledge about that?

A. Yes. In fact basically they work real closely with different people from different ethnic backgrounds. Also you have a lot of blended families in military, so it is something that is not real unusual for them.

Q. And when you say blended families, what do you mean by that?

A. Meaning families that are not necessarily both white and [58] white or black and black.

Q. Do you think that you could—based on your experience in Bossier Parish politics, do you think that you could get elected in a white majority district against a white opponent in some other part of Bossier Parish where there wasn't military population?

A. No, by no means. And that holds true because of the fact that even when I have gone and campaigned for

other people, usually people in that parish vote along racial lines, meaning that blacks vote for blacks, and whites vote for whites.

Q. Let me turn to another topic. Mr. Joiner showed you—

THE COURT: Where was Congressman—former Congressman Espe from? Bossier Parish?

THE WITNESS: Espe, from Mississippi.

THE COURT: Oh, that is right, another state. Mr. Thornton condemn me for confusing Louisiana with Mississippi.

THE WITNESS: Yes, sir.

BY MR. MULROY:

Q. Let me move to another topic. Mr. Thornton showed you some minutes of a January 11th, 1994 meeting. Let me ask you a question or two about that. At the time of that meeting, did you understand that there was an NAACP plan which—consistent with the one person one vote requirements and contiguity requirements created two black majority [59] districts? Did you understand that at the time of the January 11th, 1994 meeting?

A. No, sir.

Q. There is also a statement in those minutes that Mr. Thornton asked you about that said that you favored having the Police Jury plan and the School Board plan be the same to avoid voter confusion. The Police Jury plan and the School Board plan for the 1980s were different, correct?

A. Yes, sir.

Q. So for the past ten years or more they have been different, correct?

A. Correct.

Q. In fact, since the proposed plan has not yet been implemented because it is the subject to this preclearance suit, the current plan to this day still has different plans for the School Board and the Police Jury, is that correct?

A. Yes.

Q. If you had to choose, Mr. Darby, between having a situation where the Police Jury plan and the School Board plan were the same, and there were no black districts whatsoever, or another situation where you had a Police Jury plan and a School Board plan be different, but at least the School Board plan would give you two black districts, if you had to choose between those two, which one would you choose, Mr. Darby?

[60]

A. The School Board plan that would give you black districts.

Q. Mr. Thornton—

THE COURT: In order to arrive at that answer, Mr. Darby—

THE WITNESS: Sir?

THE COURT: Excuse me, I apologize to you. In order to give that answer or arrive at that answer, how would you square that with the alleged impediment of Louisiana state law? Do you know what I mean by that?

THE WITNESS: No, sir, if you could explain.

THE COURT: Well, counsel have informed me that in any redistricting plan Louisiana law does not permit changing precinct lines. Have you heard that?

THE WITNESS: I have heard them talk about that

throughout this trial. Basically, when we was redoing our—when we was doing our reapportionment, that wasn't a factor. Basically what we basically concentrated on was just the districts, drawing the district lines.

THE COURT: And that cut across precinct lines?

THE WITNESS: District lines?

THE COURT: The new district lines that you were drawing cut across precinct lines?

THE WITNESS: Yes, sir.

THE COURT: And they have argued here that [61] Louisiana state law prohibits that.

THE WITNESS: Yes, sir.

THE COURT: Okay. All right.

MR. MULROY: Thank you, Judge. One final point.

BY MR. MULROY:

Q. Mr. Thornton was asking you some questions about discipline in the schools in Bossier Parish and whether there was any racial discrimination in meting out discipline to students. Your experience you testified on cross examination with the discipline of students was at the lower level, believe you got to the formal hearing process, is that correct?

A. Yes, sir.

Q. And it is possible for discipline to occur at that level, correct?

A. It definitely is.

Q. And in your experience that discipline at that lower level which you know about occurred disproportionately to black students?

A. Yes, it did.

* * * *

Testimony of Government's witness Jerome Darby—Recross Examination by the Plaintiff

* * * *

[62]

* * * *

Q. So it wasn't a question of cutting and splitting precincts, it was creating new precinct lines in order to reflect the shift of population from the 1980s to the 1990s?

MR. MULROY: Your Honor, I would like to object to the way that counsel is characterizing that statement, as though there was necessarily some difference between creating a precinct and cutting and splitting precincts.

THE COURT: I think that the court has got enough intelligence to understand that. Overruled.

MR. MULROY: Thank you, Judge.

BY MR. THORNTON:

Q. You created new precincts under the one man one vote [63] rule, didn't you?

A. Yes, sir.

Q. And that is your obligation as a Police Jury, is it not?

A. Yes, sir.

Q. Because you are the governing body of the parish?

A. Yes, sir, that is correct.

Q. So you create new precinct lines to reflect the shift in population, and then from that you drew your district lines, twelve of them, is that correct?

A. Yes, sir.

Q. All right. Mr. Darby, do you have any reason to believe, or do you have any statistics, or is there any data available to indicate to you that the white votes that you got in your district were Barksdale people—

THE COURT: Were what?

BY MR. THORNTON:

Q. Were Barksdale Air Force people any more than they were just any other white citizens in that district?

A. Do I have any data?

Q. Yes?

A. Well, if you look at the two precincts that are in my district, basically one of the precincts is predominantly black. It has some white voters there as well. The other precinct is predominantly white. Of course, that means that when military people vote, they vote at that predominantly [64] white precinct. So based on what you just said, no.

Q. So you don't have any data on that?

A. No.

Q. Actually, Barksdale Air Force Base has been there in Bossier Parish for seventy, eighty, or ninety years, has it not?

A. Yes, sir.

Q. It is an old Air Force Base?

A. Yes, sir.

Q. And Bossier Parish is pretty well populated by people from the military who retired at Barksdale Air Force Base and simply stayed in the Bossier community, isn't that correct?

A. Yes, sir, that is correct.

Q. So Barksdale people, whites and blacks, are scattered throughout the parish, are they not?

A. Yes, sir, that is correct.

* * * *

Testimony of Government's witness Jerome Darby—Further Redirect Examination by the Government

* * * *

[64]

* * * *

Q. Mr. Thornton just asked you about whether the Barksdale [65] population might be scattered throughout the parish. Based on your experience as a native of Bossier Parish, and your experience in Bossier Parish politics, would you say that there is a higher concentration of what Mr. Thornton called, Barksdale people, in your district as opposed to the rest of the parish?

A. Yes. Because it is closer to the military base, and usually for the area, as far as the commuity, Government Park, and the area along there, that is where most military people, if they are not living on base, they move in those areas.

* * * *

Testimony of Defendant-Intervenors' witness Jerry Hawkins—Cross Examination by the Plaintiff

* * * *

[67]

* * * *

Q. Mr. Hawkins, how many seats do you believe on the School Board African Americans ought to have?

A. At least two, sir.

Q. Why? Why two?

A. Because of the districts.

THE COURT: Because of what?

THE WITNESS: Because of the number of districts that we have.

BY MR. THORNTON:

Q. Do you think that you ought to have two members because that is your proportion to the population?

A. Yes.

Q. All right. Do you believe that that is what the Voting Rights Act stands for?

A. Yes.

Q. Has anyone ever told you any differently?

A. No.

* * * *

[68]

* * * *

Q. You made the statements that blacks are treated unequally in the school system. Do you believe that?

A. Yes.

[69]

Q. All right. Are you familiar that—with the law suit entitled *Lemon versus Bossier Parish?*

A. Yes, partially.

Q. Do you understand it to be the litigation vehicle that presides over the Bossier Parish school system with regard to integration?

A. Yes.

Q. All right, sir. If you believe that blacks are treated unequally in the school system, have you ever filed, or seen filed, or caused to be filed any documents in the *Lemon* case in say the last fifteen years that would assert that?

A. No, sir. But in 1988, I believe it was 1988, the Concerned Citizens raising money for that, and we hired an attorney out of Monroe to go against that litigation, I believe.

And the lawyer did not file the suit. And we was out of money, so we couldn't file another suit, so we went another different direction by contacting J. Bennett Johnson. Sent him a letter, and also sent a letter to Congressman Buddy Roemer at that time. We done everything we could to try to stop this litigation.

Q. I see. But you did not file—nothing was filed in *Lemon*?

A. No, no, sir.

Q. That would have been the place to file it, wouldn't it?

[70]

A. I suppose.

* * * *

Testimony of Defendant-Intervenors' witness George Price—Cross Examination by the Plaintiff

* * * *

[77]

* * * *

Q. Tell me, sir, how many seats on the School Board should black citizens hold?

[78]

A. I believe that the population of Bossier Parish is such that it is sufficient enough to elect at least two blacks to the Bossier Parish School Board.

Q. Do you believe that this is true because of the proportion of the black population to the entire population?

A. When we look at the number of the seats on the Bossier Parish School Board, taking into consideration the total population of the parish, I feel that to be the case.

Q. All right. Now, I want to show you something, Mr. Price, and ask you some questions about it. Do you have your narrative statement in front of you?

A. I do.

MR. THORNTON: I am not sure that I have his latest one right here. May I approach the witness and coordinate?

THE COURT: Of course.

THE WITNESS: What page was that?

MR. THORNTON: Well, let's see, it was on page twelve, and it appears to be twenty-three, paragraph twenty-three.

THE WITNESS: That is not it. Do you have a current—is that my testimony that you have?

MR. THORNTON: Yes.

THE WITNESS: It is April 7th. You need to get the updated copy.

MR. THORNTON: While he is trying to get that I [79] will go on and save some time.

BY MR. THORNTON:

Q. Mr. Price, when you asked to have some participation, or wanted some participation in drawing the redistricting or reapportionment plan for the School Board, you wrote some letters, did you not?

A. That is correct.

Q. And I think that those letters are exhibits here?

A. Right.

Q. All right, sir. And I think that you have a complaint that they were not answered, or that you were not allowed in on the reapportionment planning, is that correct?

A. No, sir. That is partially correct. Initially, I wrote a letter to the superintendent in March of 1992 requesting information concerning the upcoming reapportionment process, and that we would want to be made aware of the status of the reapportionment process.

As I communicated with the Bossier Parish School Board, I always did that in a written form, and I always asked that they would respond in a written form, because in the past I had been made aware of people not remembering communications by telephone or by hearsay. So I have always communicated in a written form, and I have always asked them to respond in a written form. That was not done.

Q. What kind of participation did you have in mind?

[80]

A. I wanted to be involved to present what I considered the minority views on the current makeup of the School Board which consisted of twelve white members, and the fact that we felt as though we needed a voice on that particular School Board.

Q. All right. Did you want to have a vote in the reapportionment?

A. No, sir. As I indicated in my correspondence to the School Board, we always respected the authority of the School Board, and we always asked that we work through the School Board.

Q. Did you want to have a right to sit in the executive sessions with them when they talked about this problem?

A. No, sir. All of my communications was through School Board members. I never considered myself capable or able or authorized to sit in any kind of executive sessions with the Bossier Parish School Board.

Q. So the participation that you had in mind then was the participation or the right to tell the School Board the views that you had and wanted to see them adopt, is that right?

A. Again, partially correct. Counselor, I wanted to tell them the concerns and the desires that existed in the minority community. I wanted to tell them how the minority community felt about the issues of the Bossier Parish School Board.

[81]

Q. All right, sir. Now in any public School Board meeting, as I recall you can sign a book outside which indicates that you want to speak to the board, is that correct?

A. That is correct.

Q. Now, sir, during this period of time during this redistricting, did you ever appear before the School Board?

A. I appeared before the School Board on numerous occasions, and again, I want to emphasize that we initially requested this in March of 1992, and that the reason why we requested this was to have a written response from the School Board so that when these meetings were held our presence and our presentations would be a matter of record.

Q. Well, did you get to make those presentations?

A. We always had an opportunity to go before the School Board, and—

Q. Well—

A. I am sorry, go ahead.

Q. No, I interrupted you, Mr. Price, I am sorry.

A. Okay. Yes, we went before the School Board, and when we finished they would say, thank you, and they would go to the next agenda item.

Q. All right, sir. Did anybody ever deny you the right to address the School Board and present your concerns?

A. I have never been told that I couldn't speak.

Q. Let me ask you this. From time to time you have given [82] complaints about the school system to Superintendent Lewis, have you not?

A. Again, I have spoken with the superintendent on numerous occasions.

Q. And sometimes you gave him a written list of complaints, have you not?

A. Every presentation that I have made before the School Board, I provided the School Board with copies.

Q. I am asking you about Superintendent Lewis?

A. If I met with Superintendent Lewis, I gave him copies.

Q. One of your concerns has been that they didn't hire enough black teachers, isn't that correct?

A. That is correct.

Q. All right. Mr. Lewis tells me that he invited you to go along with them on one occasion when they were trying to recruit black teachers. Did you go?

A. When did he ask me?

Q. That is not true then?

A. I said, when did he actually—

Q. I am asking you. He told me that he had. I am asking you if that is not so?

A. Well, may I explain when he asked me?

Q. Oh, sure.

A. He asked me after several presentations before the School Board, several written pieces of communication before [83] the School Board, and he asked me to go with the School Board on a day in which—I am fully employed, and I couldn't go. Yes, he asked me to go with them.

Q. All right. Now, Is it true that you requested of Superintendent Lewis that more black teachers be assigned to predominantly black schools to provide role models for the young students?

A. f you will excuse me for a second. I am looking for exactly what I requested, because it was in writing. I

requested that—in item D of a presentation that I made to the School Board, the development of a reassignment and a transfer program to insure parity or equalization of minority teachers at all schools. That is what I asked for.

Q. You didn't talk in terms of assigning black teachers to black schools as role models?

A. No, sir. I have always advocated black teachers to be in these places for children to communicate with and be there. I don't hold the perception that blacks are the only persons that should have role models. I believe that role models are important to all people.

Q. Thank you, Mr. Price, but really what I am asking is, did you in any way indicate to Superintendent Lewis that you would like to see more black teachers assigned to predominantly black schools as role models. That is all that I am asking you.

[84]

MR. BORKOWSKI: I would object that the question has been asked and answered.

THE COURT: Once more.

THE WITNESS: All right. What I Superintendent Lewis in a conversation that we had—we have several schools in Bossier Parish with no black teachers. I asked that those teachers could be reassigned so we could at least have black teachers at every school. That is what I asked as eluded to in my statement here.

THE COURT: All right. Anything else?

MR. THORNTON: Yes, sir.

THE COURT: All right.

MR. THORNTON: Not on that though. I am finished with that line of questioning.

THE COURT: All right. What else do you want to know?

BY MR. THORNTON:

Q. Well, I want to direct you to your narrative statement on paragraphs twenty-five and twenty-six. Do you have it before you?

A. I sure do.

Q. All right. Let me read twenty-five, and you follow me and tell me if I read it incorrectly. Twenty-five: It is a widely held perception in the African American community of Bossier Parish that it is pointless for any African American [85] who will stand up for the interest of the black community to run for office.

MR. THORNTON: That is paragraph twenty-five Your Honor, I am sorry.

THE COURT: I have got it.

BY MR. THORNTON:

Q. The perception is based on the knowledge of the population breakdown of the election districts, all of which are majority white, and knowledge of the dynamics between blacks and whites in the parish, specifically the wide-spread belief that most whites will not vote for a black candidate. In addition, there is a majority vote requirement in Louisiana elections.

Number twenty-six: Only three African Americans have been elected to significant political offices in Bossier Parish from majority white electoral districts. Johnny Gipson was elected to the Police Jury in 1975. He had a reputation for speaking out about issues of concern to the African American community.

He served one term, being defeated in 1983 by

Jerome Darby, another African American who has been reelected twice since 1983. In addition, Jeff Darby, his brother, was formerly a member of the City Council of Bossier City, but was defeated by a white candidate in the last election.

Neither of the Darby brothers is a member of the NAACP [86] or the Concerned Citizens Association, nor has either brother attended meetings or associated with either organization—with either organization in any way.

It is a widely held perception in the African American community of Bossier Parish that the only way that an African American can have a chance to get elected from a majority white district in the parish is by keeping a low profile with regard to racial issues, and not belonging to or being associated with organizations such as the NAACP or the Concerned Citizens.

Let me ask you some questions about those statements.

A. And I would like to just make the statement that I stand by every word of that.

Q. Good, good. Now, Mr. Price, do you think that race ought to be an issue in an election?

A. Sir, I don't think that race ought to be an issue, but you and I both know it is.

Q. You are speaking for the black community, Mr. Price. Please don't speak for me.

A. Well, I can only assume that you are aware of how things are in America.

Q. Mr. Price, is it your idea that a black who is elected to office ought to represent only the blacks in his constituency?

A. No, sir.

[87]

Q. Do you condemn the Darby brothers—

A. No, sir.

Q. —for not making race an issue?

A. No, sir.

Q. And yet I would treat your account of this as being very critical of them for not being—or standing up, as you put it, for black citizens?

A. I haven't seen any in my statement—

THE COURT: Objection sustained.

THE WITNESS: I haven't seen anything in my statement that mentions race.

THE COURT: He objected. I sustained the objection. He stood up and objected.

MR. THORNTON: I didn't hear anything.

BY MR. THORNTON:

Q. The only way that an African American can have any chance to get elected from a majority white district is by keeping a low profile with regard to racial issues. What did you mean by keeping a low profile, of not making race an issue?

A. I believe that it is identified in that statement as I said, by speaking out on racial issues, or being members of the organizations that are identified in the statement.

Q. Mr. Price, you stand by this statement you said, every word of it?

[88]

A. Yes, sir.

Q. All right, sir. Mr. Price, when you have made any sort of complaints about the school system, had Mr. Lewis always accepted what you gave him?

A. Mr. Lewis has always accepted what we gave him, but not yet responded to what we gave him.

Q. Well, did he explain to you the problem as he explained to the court of trying to hire more black teachers? Is that the first time that you ever heard his explanation?

A. No, sir, it is not. But we went before the School Board and presented a list of concerns from the black community. We asked that they respond to those concerns. After several weeks of no response, we went back again and asked what happened to those concerns?

They asked us to provide a list of solutions to our own concerns, or to give them some ideas of how these things could be done. We did that after much research. We did that. We submitted what we considered partial solutions to our concerns, and that did include a recommendation on how to recruit more black teachers. Yes, sir, we did that.

Q. All right, sir. Let me ask you what was your solution? You have Superintendent Lewis in the back, and I know that he is retiring, but tell him, tell the court what you want him to do that he hasn't done?

A. Again, counsel, I want to make clear of what I am [89] saying. I am saying that as we went before Bossier Parish School Board, we always submitted suggestions and concerns. We never submitted goals. In my statement we identify what could be done—what, in our opinion, could be done to recruit more black teachers. Let me see if I can find it quickly.

On page eleven of my testimony. The main areas of concern about school operations are as follows. Develop an early recruitment for black teachers, diligence in recruiting, hiring, retaining, and promoting African American teachers.

Those were our concerns. Let me see if I can find our solutions—our recommendations rather. I am not able to find it, but I believe that it is a matter of record. If I could have—

Q. Let me just ask you this—

A. Just a minute. I have them here. I have them here.

THE COURT: What page?

THE WITNESS: Suggested solutions in my testimony, sir.

THE COURT: Page and paragraph what?

THE WITNESS: I don't see a number on there.

MR. BORKOWSKI: Your Honor, that is at twelve A.

THE COURT: Thank you.

THE WITNESS: I said the Coalition of Bossier [90] Parish, Concerned Citizens of Bossier Parish, Men's Club, Concerned Citizens of Plain Dealing and Bossier Parish branch and NAACP suggested solution to our concerns to Mr.—

MR. THORNTON: Wait a minute. I am still looking for that. That is exhibit what?

THE COURT: They are not labeled as exhibits in the attachments to the statements furnished the court.

MR. THORNTON: Can you show it to me?

MR. BORKOWSKI: Yes, sir, absolutely.

THE WITNESS: Counselor, this suggested solutions to our concerns was addressed to then President Barry Musgrove, and this information or response is provided to you as a follow up to our presentation on July the 15th.

The Executive Committee of Bossier Parish Branch of the NAACP, and other organizational leaders, met on July the 20th, 1993, to discuss the best method of previous recommendations to you that we feel will improve certain areas of our school system.

We hope that the recommendations contained herein will assist you, Superintendent Lewis, and other School Board members in formulating solutions to our concerns. And then we went on to name our recommended solutions.

And in item two the issue of teacher recruitment concerns us greatly. We feel strongly that additional efforts can result in the placement of additional minority [91] teachers into the Bossier Parish school system. The following steps may help. Expand the area of recruitment to include—

BY MR. THORNTON:

Q. Mr. Price, let me interrupt you. We have it—the court and I have it before us.

A. Well, I wanted to make sure that you understood it.

Q. I think that the court has, too. Let me ask you some questions about them, unless the court wants you to read them all into the record.

THE COURT: No. They are already in the record as a part of his testimony—direct testimony. Sir, you don't have to read them again, because the court has them before it, unless you want to read it.

THE WITNESS: Well, sir, I wanted to point out a couple of things.

THE COURT: All right. Why don't you do that, because this is an important matter for you and for all of us.

THE WITNESS: Yes, sir. And item G of this—on these recommendations, we ask the insurance that the School Board show compliance with the 1970 consent decree which requires a seventy-five/twenty-five high end ratio until requirements are met.

Currently, we are not in compliance with that [92] requirement by the courts, and that simply meant that for every hundred teachers hired for Bossier Parish, twenty-five should be black, and seventy-five should be white, until the School Board was in compliance with the consent decree, and that is why we were very concerned about that issue as we present it in this particular document.

BY MR. THORNTON:

Q. Now, Mr. Price, let me ask you about this. You heard Mr. Lewis this morning, did you not, answer the court's questions about how he goes about trying to recruit black teachers?

A. Yes, sir. He said that he goes to Grambling and Louisiana Tech.

Q. Well, I think that he talked about LSU as well, did he not?

A. But as you notice in our recommendations, we included some of the southern black—predominantly black colleges in the State of Louisiana such as Southern in Baton Rouge, Xavier, and Dillard in New Orleans,

and we expound on that, and we made some recommendations on how that could be done.

Q. You think that he is not going to enough schools, is that it?

A. Yes, sir. This document, I think, speaks for itself.

Q. He also talked about the difficulty of hiring because of salary gaps with neighboring parishes. Do you think that [93] that is a concern?

A. Well, we have talked about that even before the School Board. Now, my concern is the dilemma there. If whites have—

THE COURT: Wait a minute, your concern is what, sir?

THE WITNESS: I have a dilemma with his explanation of why he can't hire blacks. Your Honor, there is no problem to hire white teachers in Bossier Parish, and I asked the question at the School Board meeting, are you all paying them different? Do white teachers make more than blacks? He said no.

I said, well, why don't you have a problem if salary is a problem hiring black—I mean white teachers. You always have white teachers. He said, well, I don't know. But the question still remains, if the salary in Bossier Parish is low, why is there no problem recruiting white teachers, only black teachers?

And what I have been told by black teachers is that the reason why they don't come to Bossier Parish, they cannot get promoted. They are not treated fairly in the system, and they have to leave, because they come in and see white teachers come in that they know received certification after them, and they rise to higher positions in the system, and the blacks that have been there do

not get those [94] opportunities, and they seek them elsewhere. That is one of the things that we have expressed as a concern.

BY MR. THORNTON:

Q. Well, Mr. Price, if that is true, then shouldn't motions and petitions have been filed in the *Lemon* case to protest that?

THE COURT: Mr. Thornton, how can—this is a lay person. He may be a leader in the community, and nobody doubts that—and nobody doubts that, I don't think. At least the court doesn't doubt it.

THE WITNESS: Thank you, Your Honor.

THE COURT: But he is not supposed to pursue everything in the world through the courts or whatever, is he?

MR. THORNTON: I think he is.

THE COURT: Well, maybe you do.

MR. THORNTON: They certainly have attorneys to do that.

THE COURT: I don't know whether they do or whether they don't. The issue in this case is whether the Attorney General of the United States properly denied preclearance of the districting plan for the election of School Board in 1993 for the Bossier Parish.

That is the issue. It doesn't have anything to do with whether he has filed a motion to supplement the record, [95] or to intervene, or to get some further relief in a school desegregation case. That doesn't have anything to do with that, does it?

MR. THORNTON: Your Honor—

THE COURT: Does it? Does it?

MR. THORNTON: Well, with all due respect to the court, yes, it does.

THE COURT: All right. Thank you very much. If it does, I will take your word. You can say that it does, and you can give me a memorandum showing me why. All right, next question.

MR. THORNTON: All right, sir.

BY MR. THORNTON:

Q. Do you think, Mr. Price, that the disciplinary system falls more heavily on black students than on white students in Bossier Parish?

A. Without question it does.

Q. Have you ever attended one of those hearings?

A. I have had numerous members of the NAACP request that I go, and I have been asked not to come on some occasions by some of the School Board people, that they could handle and resolve that issue. I have not attended a School Board hearing with any parent.

Q. Is it your testimony that you have been told that you have been discouraged from attending any of those hearings, [96] and if so, by whom?

A. By School Board officials.

Q. By whom?

A. By Joshua Bryant. By the personnel man in Bossier Parish, oh, what is his name?

Q. What reasons did they give you?

THE COURT: Well wait a minute. Let him think. Don't jump on him.

THE WITNESS: That they would resolve the issue.

That they would resolve the issue. And might I say in my opinion, and I am speaking from my opinion now, that these issues are things that they would rather not have public concerning the treatment of the students in the system, so they would refrain from any opportunity of making allegations of mistreatment of students, especially black students, a public issue. And they will tend to resolve that.

BY MR. THORNTON:

Q. And the people who told you this, were they black or white?

A. They are black.

Q. All right. You heard Mr. Lewis outline the procedure for disciplinary action in the Bossier Parish School Board. Do you think that that is a fair system?

A. It may have the mechanisms in place to be a fair system, but again, my opinion is that it is not a fair system.

[97]

Q. How would you make it more fair?

A. Well, I would certainly have people that have legitimate concerns and complaints heard, and I would certainly look into—and let me just emphasize on what I am talking about here, too.

We went before the School Board and asked for statistics on expulsions, on disciplinary actions, on kids being put in the GASP program, on the low scores of black students, and they have told us that they don't keep those statistics according to race.

But yet we know that there is some differences between the number of black expulsions and retentions that they have in the system than there are as they

apply to the white students. They told us that they do not keep those according to race.

Q. You are telling this court and me, under oath, that there are different standards for disciplining white from blacks in the Bossier Parish school district, is that what you are saying?

A. I am telling you my opinion, and my opinion is, yes, it is.

THE COURT: And that African American people, or students rather, excuse me, are treated more severely?

THE WITNESS: Yes, sir.

THE COURT: Than white people?

[98]

THE WITNESS: Yes, sir.

THE COURT: All right.

THE WITNESS: For the same offenses.

THE COURT: Correct. I understand your position and testimony.

MR. THORNTON: I have just a question or two, Your Honor.

BY MR. THORNTON:

Q. During the redistricting process, Mr. Price, do you know of any group representing any—or claiming to represent any group of people, black, or white, or so forth, who had any more participation in the plan and the reapportionment process than the Concerned Citizens or the NAACP?

A. Counselor, when you say participation, let me tell you what my definition of participation is. Participation to me is not coming to the board and presenting an

optional plan and leaving. Participation is trying to find out what they can do as board members that were duly elected to represent us to address these concerns.

Nobody never came to us and sat down with us and said, what can we do as your elected board members to do something about your concerns? They let us make presentations, and as I said a few moments ago, after we made the presentation they said, thank you, and they went on to the next agenda item. Now, I don't know what you mean by participation. I don't [99] consider that participation. I consider that coming and making a presentation.

Q. All right. Now, do you know of any other groups, any groups whatsoever, in which any School Board member went to see and asked about the redistricting plan?

A. I know that there was some people there from the Concerned Parents of Plain Dealing. I know that there was some people there from the Tenant Coalition, and I know that there was some people there from the Bossier Parish Voter League, all of whom the presidents of those particular bodies elected me as their spokesperson, and was in agreement with the letters and the documents that I presented. I don't know what else—how else I can answer you on that.

Q. Well, I guess the only question, Mr. Price, was in the participation. Do you know of any group that participated any more actively than your presentation, or who sat in on the meetings that adopted the reapportionment plans? If you do, tell us who they are?

THE COURT: What year are you talking about? 1991?

MR. THORNTON: 1992, 1993, and even into 1994.

THE COURT: Wait a minute. I am the Judge here. I have got to decide this case. Now, you are talking about a 1991 plan, or was there one in 1992, or just action on a 1991 plan in 1993? Now what are you talking about?

MR. THORNTON: I am talking about the deliberations [100] of the School Board in 1992.

THE COURT: All right. That is different than 1991 and 1993. What did they do in 1992?

MR. THORNTON: And on into 1993.

THE COURT: What did they do? Did they adopt a plan during that period?

MR. THORNTON: They adopted a plan during that period.

THE COURT: The School Board?

MR. THORNTON: The School Board.

THE COURT: For election of its members?

MR. THORNTON: On the time schedule—I think it was in September of 1992.

THE COURT: All right.

THE WITNESS: October, October.

MR. THORNTON: October of 1992.

THE COURT: Thank you, sir. You are helpful.

THE WITNESS: Thank you.

MR. THORNTON: Do you want me to restate my question now?

THE WITNESS: Yes.

THE COURT: Well, we have got to keep it in focus, Mr. Thornton.

THE WITNESS: Yes.

BY MR. THORNTON:

[101]

Q. Do you know of any group, any group of citizens, any private group, not the School Board members but any private group who sat in on the deliberations with the School Board when it was discussing the adoption of a reapportionment plan?

A. Let me reemphasize to you what happened. Again, the major black organizations in Bossier Parish elected me as their spokesperson.

THE COURT: You have said that.

THE WITNESS: All right. We came to these meetings and made presentations. We did not sit in on deliberations or decision making as the plan was adopted. We made presentations.

When the plan was voted on, the night that the plan was voted on, we had a map on display, as well as the Bossier Parish School Board had a map on display. After our presentation at the public hearing, they moved on to adopt their plan.

Now, I don't know what you mean by participation. You keep using that word, but I have a difference—a different idea of what participation is and what presentations are.

MR. THORNTON: May it please the court, I know that I am taxing the patience and time of the court, but I am not getting answers to my questions.

[102]

THE COURT: Overruled. You may not be getting the answers that you want, but you are getting answers. So that is it.

MR. THORNTON: Well, in that case, Your Honor—

THE COURT: What else can you do about it? Nothing.

MR. THORNTON: I can give up I guess on this witness.

THE COURT: I believe that you could. It is your option.

* * * *

Testimony of Defendant-Intervenors' witness George Price—Redirect Examination by the Defendant-Intervenors

* * * *

[102]

* * * *

Q. Mr. Price, after you sent this letter to the School Board asking to participate in the redistricting process, you weren't given any information, were you, about any work session that the School Board had with Mr. Joiner to look at options or work on a plan, were you?

A. No, sir. No response at all.

* * * *

Testimony of Defendant-Intervenors' witness David Arnold Creed—Cross Examination by the Plaintiff

* * * *

[115]

* * * *

Q. You say that it has been a common practice in Louisiana to cut and split precincts?

A. Yes, sir. To my knowledge, and I am confident that that is true.

Q. Oh, I think it is. And there is a state law that you are aware of, are you not—

A. Yes, sir.

Q. —that prevents that?

[116]

A. Act 925, that is right.

Q. But the Police Jury sometimes accommodate other subdivisions by splitting precincts?

A. Yes, sir. And all of the cases that I know about they have accommodated.

Q. Do you know of any law, or have you been told of any court decision or any law that says that a Police Jury can violate or set aside the state law for these purposes?

A. Well, I —

MR. BORKOWSKI: He is assuming facts that are not in evidence.

THE COURT: Overruled. I will let him answer.

THE WITNESS: Am I aware of any laws at all?

MR. THORNTON: Yes.

THE WITNESS: That would allow —

BY MR. THORNTON:

Q. My question, Mr. Creed, is when you are doing these, you don't know—or do you basically know whether what you are doing is legal in Louisiana or not?

A. I believe that it is legal, yes, sir.

Q. All right. On what basis do you believe it?

A. Because I have found nothing in the law that it violates any laws anywhere, and because I have done—counting the one that I am working on now, I have done —that makes fifteen, and they have all been precleared, and accepted, and [117] elections have been held, and people now hold their positions, and I guess that I am assuming that it is legal.

Q. You are assume that it is legal?

A. Yes, sir.

Q. All right. Now then, you state some opinions about gerrymandering?

A. Yes, sir.

Q. And your opinion is that this—well, not this plan, but the plan that was—the plan that the Bossier Parish School Board presented and is before this court, you are saying that that is a gerrymandered plan?

A. No, sir.

Q. Well, are you saying that Mr. Cooper's plan is gerrymandered?

A. No, sir.

Q. So you see no gerrymandering at all?

A. Everyone seems to have a different definition of gerrymandering here.

Q. What is yours?

A. My definition—it is in my written testimony, but generally that you would take a geographical area and draw an area in order to create a district for an elected body that would take all kinds of twists and turns and be what I said was tortuous and convoluted in order to arrive at whatever goal it might be that you are trying to arrive at in drawing [118] the districts. That is gerrymandering to me.

Q. Would gerrymandering be the opposite of sound demographic principles?

A. It would not be consistent with sound demographic principles.

Q. All right. If you have sound demographic principles and use them, you would not have a gerrymandered district, would you, is that fair enough?

A. That is fair.

Q. And you don't find that there is gerrymandering in any of these plans?

THE COURT: Which plans? Any of—there are so many that we are talking about here, I want to know which ones you are asking about?

BY MR. THORNTON:

Q. The School Board, and have you seen the Cooper two plan?

A. I understand that there is a NAACP plan. I have not seen that plan.

Q. All right. You have seen the Cooper plan?

A. I have seen one called the Cooper plan.

Q. And you have seen the one that we call the Police Jury plan that is before this court?

A. Yes, sir.

Q. And you find no gerrymandering in either of those?

A. I find it to be about the same as most of the plans that [119] I have seen developed and approved.

Q. All right, sir. I had one other question and it slipped my mind. Just a moment. Oh, the question was, sir, in all of the precinct splitting of plans that you helped to get to preclearance, what is the largest number of precincts that you have ever split?

A. Eight.

Q. No more than eight?

A. No, sir.

MR. THORNTON: No further questions, Your Honor.

THE COURT: When did you draw—no further questions?

MR. THORNTON: From me.

THE COURT: Do you have any?

MR. BORKOWSKI: No, Your Honor.

THE COURT: Are you finished?

MS. HUME: Yes, Your Honor.

THE COURT: All right, Mr. Creed, let me ask you a question.

THE WITNESS: Yes, sir.

THE COURT: You say that you have in the course of over the last fifteen years I gather—

THE WITNESS: Yes, sir.

THE COURT: —have drawn a large number or a substantial number of boundaries, geographical boundaries for [120] the election of various entities or political—

THE WITNESS: Yes, sir.

THE COURT: — groups?

THE WITNESS: Right.

THE COURT: Throughout the State of Louisiana?

THE WITNESS: Throughout northeast Louisiana is where—I am located in Monroe Louisiana, and Louisiana has eight planning and development districts which cover the state, and the one that I am the director of covers the northeastern part of the state. And like I said, I am in Monroe. The ones that I have done have been in that part of the state.

THE COURT: Is that the same part that we are talking about here?

THE WITNESS: No, sir. That is the northwestern part.

THE COURT: All right. Mr. Thornton told me that yesterday. Were you here yesterday?

THE WITNESS: Yes, sir.

THE COURT: Did you hear the testimony that there is a Louisiana state law that says that you can't modify or cut across precinct lines?

THE WITNESS: Yes, sir.

THE COURT: Under Louisiana state law in order to accomplish and establish a redistricting plan?

[121]

THE WITNESS: Yes, sir. I have a copy of the law.

THE COURT: How many times have you had to do that in the course of your work, cut across or split up a precinct, an existing precinct line?

THE WITNESS: In order for School Boards, I have done it three times.

THE COURT: All right.

THE WITNESS: But for municipalities I would have to count them up. I would say about five ot six times.

THE COURT: And the same Act 925 applies to municipalities as it does to School Boards, doesn't it?

THE WITNESS: I don't think it does.

THE COURT: Or does it?

THE WITNESS: I don't think that it does.

THE COURT: All right. What about Police Juries?

THE WITNESS: No, sir. I think that it only applies to School Boards, and in large Police Juries, it is a technical question or interpretation as to are they splitting or creating precincts, because once they do the splitting in—

THE COURT: Who is they?

THE WITNESS: The Police Juries. Once a Police Jury in its own reapportionment effort splits precincts and then by legal description, and by mapping, and by ordinance creates this new plan, then they have created new precincts. [122] So they have split, but they create at the same time. I hope that I am making myself clear.

* * * *

Testimony of Government's witness Jerome Blunt—Cross Examination by the Plaintiff

* * * *

[106]

* * * *

Q. When you were on the School Board, Mr. Blunt, did you have much contact with Mr. Price or any of the other leaders of the black community?

A. I don't quite understand your question. When you say contact, do you mean at regular board meetings?

Q. No, sir. I mean outside of board meetings. Were you close to those groups?

A. No. I would say no, I wasn't close.

Q. Did they ever talk to you at all about their concerns in the school system?

A. At the board meetings, yes.

Q. How about outside of the board meetings?

A. No, they didn't.

Q. They didn't ask you, for example, to go to the superintendent and talk about hiring black teachers?

A. No.

Q. They didn't come to you as a black School Board member and ask you to look into the disciplinary mechanism in the school system?

A. No.

Q. They didn't come to you and ask you about assigning black teachers to black schools as role models?

A. No.

[107]

Q. Why do you think that they didn't do that, Mr. Blunt?

A. My personal opinion on that, Mr. Thornton, is that Mr. Price and the coalition have been fighting this fight for a long time. They had information that—they are long-time Bossier residents, so they knew the ins and outs of the school system, and they knew, in fact, what the minority community wanted and needed.

Q. But you were sort of an insider at that point, sort of on the School Board?

A. That is right.

Q. I would have thought that they might want you to lead or to pinpoint their concerns within the school administration. They didn't ask you to do that?

A. No. I would like to explain that answer. The African community in Bossier Parish is concerned about various things in the school system, but also we have our own things that we are concerned about now.

My role as a School Board member was to represent District K, the district that I was concerned. Now, I was also, concerned about all of the members of the parish also, too. As a School Board member then, my concern is the entire parish and my district.

Q. Did you consider, then, that you really represented the whole constituency, and you were interested in the betterment of that district and the School Board system, is that [108] correct?

A. Absolutely.

Q. You didn't think that you just represented blacks, you thought that you represented everybody, is that correct?

A. That is correct, but I would like to expand on that answer.

Q. All right, sir, by all means?

A. Okay. I represented the whole school system. I think that that is foremost. But when there is a population that seems excluded, that does not seem that they are a part of the system, then my role also as a board member is to look into those concerns and to talk with those people about those things.

Q. And did you?

A. I was aware of those things at the board meeting. When I was on the board, a lot of those things were already in place. As Mr. Price had talked to earlier, he had asked to be on the process early in 1992. My appointment started in September of 1992.

* * * *

[109]

* * * *

Q. When you ran for reelection, did Mr. Barry Musgrove give you any assistance in running?

A. I asked Barry Musgrove, and he gave me some information, but when I asked for support from my fellow colleagues as an incumbent, all of them were basically afraid to come out and say that I am supporting Jerome Blunt, because they were worried about the persecution if they—of their constituents maybe, and the persecution of the person who maybe would replace me.

Q. In other words, they didn't take a real active part, but they did—Mr. Musgrove gave you some advice, did he not? I mean—

A. Yes.

[110]

Q. I mean seemed friendly to your campaign?

A. Yes.

Testimony of Defendant-Intervenors' witness Thelma Harry—Cross Examination by the Plaintiff

* * * *

[132]

* * * *

Q. Ms. Harry, how many seats do you believe that the black [133] community should have on the Bossier Parish School Board?

A. I would like to see them have three.

Q. All right. And why do you think that they should have three?

A. Because there are twelve now, and if you have three, we could depend on at least two to get some of our concerns through.

THE COURT: Two out of twelve would be able to do it?

THE WITNESS: Well, I want a back-up system.

BY MR. THORNTON:

Q. Do you think that the seats should have any relationship to the black proportion of the population?

A. I do.

Q. Have you been told that by anyone?

A. No. That is my own function.

* * * *

Testimony of Government's witness Johnny Gipson—Cross Examination by the Plaintiff

* * * *

[138]

* * * *

Q. Wait a minute, let me finish my question for the record. On the School Board, how many seats do you think that the black community ought to have? Now go ahead.

A. At least two, based on the population given, about two.

[139]

Q. Based on what, sir?

A. On the population, two.

Q. The percentage of blacks of the population?

A. Yes.

* * * *

Testimony of Government's witness Jeffrey Dewayne Darby—Cross Examination by the Plaintiff

* * * *

[145]

* * * *

Q. Mr. Darby, how many seats do you think that the black community deserves to have under the Voting Rights Act on the Bossier Parish School Board?

A. Sir, unrealistically I wish that we had six. But realistically, two.

Q. And why two?

A. To represent the population of Bossier Parish, the minority population.

Q. Because that is their proportion to the entire population?

A. (Nodding head.)

Q. You have to speak out, sir?

A. Yes, sir.

Q. Mr. Darby, remind me, I couldn't find it right quickly. When did you run for the City Council?

A. 1989.

Q. And you won that seat, did you not?

A. Yes, sir.

Q. Was that from a predominantly white district?

A. Yes, sir, it was.

Q. What was the racial composition of that district?

[146]

A. Approximately twenty-two percent minority, and the rest majority.

Q. Seventy-eight or something like that?

A. Um-hum.

Q. And how many votes did you win by?

A. Approximately thirty votes.

Q. Did you make race an issue?

A. No, sir.

Q. Did you make—as an issue did you make the concerns, or what we would call the real issues of the election a part of your campaign?

A. I am not understanding your question.

Q. Well, I am not saying it very well, either. The issues of the campaign, were they—other than racial, I mean what the community ought to do, what the Police Jury ought to do about the problems, that sort of issue, is that what you ran on?

A. Yes, sir, pretty much.

Q. Okay. And in the meantime, after you had been elected, but before you ran again, the City Council changed their districts, did they not?

A. Yes, sir.

Q. That was after the Police Jury had changed its districts?

A. Yes, sir.

[147]

Q. And you were not, I think, happy with the district which—or which was drawn around your residence?

A. This is correct.

Q. But you ran and you lost, did you not?

A. Yes sir.

Q. Lost to what, Mr. Swayer?

A. Right.

Q. Who was white?

A. Yes, sir.

Q. And how many votes did you lose by?

A. Between fifty and fifty-eight.

* * * *

Testimony of Government's witness Dr. Richard L. Engstrom—Cross Examination by the Plaintiff

—* * * *

[151]

* * * *

Q. You have told us in your declaration what methodology you used to come to the conclusions that you came to, and the conclusions appear to be, sir, that in your opinion people in Bossier Parish vote by race, is that correct?

A. I believe that the conclusion is that in the election that I have studied, there is evidence that voters divide along racial lines.

Q. Okay. I stand corrected. Is that a fair statement, what you are telling us?

A. In the elections in which I was—I believe I was able to determine candidates of choice, that tends to be the case, yes.

Q. Okay. I want to ask you some questions about this study that you made of Bossier Parish. How many times have you been to Bossier Parish?

A. Oh, I don't know the total number, but it wouldn't be very many.

THE COURT: What do you mean by that?

THE WITNESS: Maybe two or three times, not connected to the study.

[152]

THE COURT: What did you do there?

THE WITNESS: Went to a famous barbecue restaurant I remember the last time.

THE COURT: In Shreveport?

THE WITNESS: In Bossier City. I was in Shreveport and specifically went to Bossier City for barbecue. I did not go to Bossier Parish for the purpose of the study, and I am from New Orleans, so I am not up there too often.

BY MR. THORNTON:

Q. Of any of the political contests that form a part of your study, I want to ask you some questions about them. Did you ever talk to any of the candidates?

A. For the purpose of the study?

Q. Yes?

A. No.

Q. Did you ever make a study of what the issues of the political—

THE COURT: Wait a minute, you didn't get an answer to the first question. Did you ever talk to the candidates?

MR. THORNTON: I think he said no.

THE COURT: Oh, I didn't hear.

THE WITNESS: Not for the purpose of the study. I have met some since and I have talked with them, but not prior to preparing this, nor for the purpose of preparing this study.

[153]

THE COURT: All right. I am sorry. I didn't hear you.

BY MR. THORNTON:

Q. Do you know what the issues, campaign issues

were, in any of those elections that you have talked about?

A. No, I do not.

Q. Did you make any study of what kind of campaign organization each of the candidates might have put together?

A. No, I did not.

Q. Did you have any idea of how much money they might have had in their political coffers to get across their programs?

A. No, I did not.

Q. Do you happen to know whether any of them had debates at a public forum and a face-to-face confrontation with the public?

A. No, I do not.

Q. Did you happen to know anything about the backgrounds of any of those candidates in terms of political experience or education?

A. Not for the purpose of assessing racial divisions and voter candidate preferences, no.

Q. All right. Ought those factors that I have asked you about, and other factors, don't they sometimes have some sort of impact on the outcome of political campaigns?

A. There are all sorts of things that can have an impact on [154] the outcome of political campaigns. I was addressing a specific research question, did African American voters and non-African American voters in these elections, in which they were given a choice, between or among African American and white candidates, have different candidate preferences, and to

answer that question, I don't need to do all of these other things that you are asking me about.

Q. All right, sir. Tell me this, then. Have you ever examined any parish in Louisiana, or any county anywhere in the United States, in which racial preference doesn't have some impact on the outcome of the election?

A. I can't recall doing—I mean doing an analysis of one in which there wasn't some impact, in which voters didn't divide along racial lines, certainly, to some extent.

Q. You have a doctor of philosophy in the field of political science, do you not?

A. That is correct.

Q. And so within your area of opinion, do you have any benchmark in which you can compare Bossier Parish with any other parish or county as to whether racial preference affects the outcome of political campaigns?

A. Well, I haven't been asked to make that comparison, so I haven't come up with a benchmark, and I haven't even thought about what the benchmark might be if I needed one.

Q. Well, if other parishes and other counties allowed [155] racial preference to have impact on election results, and you tell me that Bossier also has, how have we advanced human knowledge by that fact?

A. Well, I don't know if we have advanced human knowledge through my study. It may be very well that the people in the audience find that I have documented the obvious in this analysis, that African American voters in Bossier Parish vote for African American candidates usually when given that choice, and white voters

do not. I mean I don't know that I have advance knowledge, but those are the results of my studies.

Q. But you don't know any other area that doesn't have a certain amount of that, do you?

A. Well, I don't know what you mean by a certain amount of that, and I haven't studied all areas. Usually when I do these types of analyses, it is in the areas in which there are voting rights issues. So it is not uncommon to find this. In fact usually this is the case.

Q. Well, you are a political scientist. Isn't it true that sometimes Catholics won't vote for Protestants?

A. Excuse me, Catholics will vote for Protestants?

Q. I say—listen to me, Doctor.

A. Okay.

Q. Isn't it true that in—just in your experience, and certainly in your area of academic excellence, isn't it [156] sometimes true that Catholics don't vote for Protestants, or Protestants don't vote for Catholics?

A. Oh, I suppose that that is sometimes true. However, not anywhere to the extent that we have racial divisions. Race is the major demographic variable in American politics.

Q. Everywhere—

A. There is no other division in American politics that even comes close to it.

Q. Everywhere—

THE COURT: Did you ever hear of Mayor Daley in Chicago?

THE WITNESS: Me?

THE COURT: Yes.

THE WITNESS: Have I heard him?

THE COURT: Have you ever heard of him, I said?

THE WITNESS: Senior or junior? The current one or the previous one? I have heard of both.

THE COURT: Both.

THE WITNESS: Okay.

THE COURT: Did you ever hear of a man named Boss Hague in Jersey City, New Jersey?

THE WITNESS: Yes.

THE COURT: Did you ever hear what used to happen the Sunday before elections in every Catholic parish in Jersey City?

[157]

THE WITNESS: Well, I don't know for sure, but I assume that there was probably a visit to the church.

THE COURT: I said in every Catholic parish?

THE WITNESS: No.

THE COURT: It was a visit to the church. Did you ever hear what happened in those churches?

THE WITNESS: I guess that I have not heard that.

THE COURT: You haven't, and you have a Ph.D. from the University of Kentucky? No wonder they didn't win the basketball tournament this year. I just thought of those two examples as a result of his questions. You have not heard of that kind of discrimination?

THE WITNESS: No. I mean I don't know what happened at Catholic parishes a week before elections, or the Sunday before elections in Jersey City, no.

THE COURT: You don't know anything about—

THE WITNESS: I am fairly familiar with Chicago, but—

THE COURT: What happened there?

THE WITNESS: When, before elections?

THE COURT: Yes. What happened in 1968 there, or late 1960 there?

THE WITNESS: I don't recall what happened in 1960.

THE COURT: All right. I was thinking about the presidential election in 1960.

[158]

THE WITNESS: Oh,

THE COURT: You are a political scientist.

THE WITNESS: Well, I mean—I assume at that point you are talking about late election returns being reported.

THE COURT: I am talking about the same subject that Mr. Thornton is asking you about, sir.

THE WITNESS: Whether Catholics vote for Protestants, or whether there are times when they don't? I mean—

THE COURT: Well, the question is there. I am not going to restate the question for you, sir. You either answer it or you don't answer it. I don't care. You do or don't.

THE WITNESS: Well, I thought you were asking if there were times when Catholics don't vote for Protestants, and I said that I suspect that that can be the case.

THE COURT: You don't know of any instance though, is that what you are saying?

THE WITNESS: When Catholics didn't vote for Protestants? Catholics voted for Kennedy in 1960, but not to the percentage, I don't believe, that we generally find African Americans voting for African Americans, nor were Protestants as opposed as we usually find along racial lines. I still maintain that race is a far more serious demographic [159] division in American politics than religion.

THE COURT: All right, sir, thank you. I hear your opinion.

BY MR. THORNTON:

Q. Doctor Engstrom—

THE COURT: Please don't misunderstand me. The court has no opinion on this. I am just asking you for your knowledge.

BY MR. THORNTON:

Q. As a political scientist, do you have an opinion as to whether or not separating races and focusing on the differences, and assigning black majority and white majority districts on the basis, say, of proportion in the population, do you have an opinion as to whether that ameliorates and eases racial hostility, or would you think that it might increase or exacerbate hostility?

A. I believe that over time, if it provides African Americans with an opportunity to elect candidates of its—of their choice, I think that it will ameliorate it. I think that as we see African Americans elected to public office, and serving in public office, some of the fears of white voters will recede, and the horrible things that they may expect to result from the elections of blacks,

at least among some white voters, will recede into the background, and we will probably, at that point, hopefully in the future, begin [160] to have elections that are driven less by race.

* * * *

Testimony of Government's witness Dr. Richard L. Engstrom—Redirect Examination by the Government

* * * *

[166]

* * * *

Q. Doctor Engstrom, when Mr. Thornton was asking you about whether you conversed with the candidates, and visited the parish, knew anything about the campaign issues, is it a standard practice in your area of expertise and its statistical methodology in analyzing electoral behavior to look at these kinds of factors in your study?

A. It would depend on the research question being addressed. If one is trying to do a causal analysis of why voters vote the way that they do, then one would certainly go on and look at other variables.

But if one is simply addressing an empirical question, do African American voters and non-African American voters have different candidate preferences, then that is not the appropriate analysis.

You simply look at the voters, and the way that the votes have been cast, and using the best available data that you can obtain, see if there are indications of whether you can identify those candidate choices, and whether they are different.

* * * *

Testimony of Defendant-Intervenors' witness William S. Cooper—Cross Examination by the Plaintiff

* * * *

[177]

* * * *

Q. Now listen to me very carefully. In Cooper one and Cooper two, was your motive in drawing those districts as you drew them, and splitting the precincts as you have described, were you trying to draw it in such a way that there would be two majority black districts?

A. I was asked to assess whether or not it was possible to create two majority black districts using traditional redistricting criteria, and yes, that was the result.

Q. That was your instructions?

A. Right.

Q. All right.

THE COURT: What are the traditional criteria in [178] your view?

THE WITNESS: Well, in my opinion the three fundamental criteria are one person one vote, making sure that the deviation for a particular district does not exceed five percent, assuring that a district is contiguous. In other words, that all pieces are joined together.

And finally I think in an area where there is a significant minority population, you have to follow the Voting Rights Act and produce a majority black district, providing that it can be done. There are places where it cannot be done, but in the case of Bossier Parish I believe that it could be done there.

THE COURT: Is there anything about compactness?

THE WITNESS: Compactness is a very fuzzy term. I try to make the district as shapely as possible, but in point of fact you are frequently dealing with oddly shaped jurisdictional boundaries, oddly shaped municipal our county boundaries, I should say, oddly shaped precincts.

The distribution of population can be kind of unusual, so that it is really very, very difference to look at a plan and signal out a district and say that it is not compact or that it is compact without knowing a little bit more about what is beneath the lines so to speak.

THE COURT: So the court's use of the words compactness are not necessarily correct?

[179]

THE WITNESS: Well, I think that it is laudable goal, and I sort of know what compactness is, as we sort of know what beauty is and truth is, but it is very hard to define, and ultimately, I attempt to make a district as shapely as possible, as square and neatly bounded.

But I don't — I don't employee, for example, a measure of compactness to determine whether or not a district meets a certain compactness standard, nor do most governing bodies that I encounter. It is highly unusual to ever see a jurisdiction — in fact, I have never seen a jurisdiction produce a compactness measure as a part — as part of their redistricting process at the local level anyway.

* * * *

§ 52. Election and qualification of members; term of office

A. There shall be elected by the qualified voters of each parish police jury ward, or the equivalent thereof, of each parish of the state a member of the school board of the parish for each police juror in said ward, or the members of a parish school board shall be elected by the qualified voters in accordance with the school board reapportionment plan then in effect as authorized by law, or the members of a parish school board shall be elected in accordance with any special law applicable to the board, as the case may be. Members of parish school boards shall be elected at the congressional elections. Members elected in 1986 and thereafter shall serve four-year concurrent terms beginning January 1 following their election.

* * * *

[The following is from the 1982 Main Volume:]

§ 71.3. Procedure for accomplishing reapportionment; special election districts; effective date of same

A. Each of the parish and city school boards shall use the federal census of 1970 as the basis upon which to accomplish reapportionment, provided however, that each of said school boards may authorize the taking of a special census to use as a basis for reapportionment. To this end, each of said school boards may employ qualified firms to take such special census, and may employ such other consultants, attorneys, etc. as it deems desirable in order to assist such board in such reapportionment.

B. Each of said boards, after determining the number of members of said board after reapportionment is to be effective, may create such special school board election districts as it deems desirable, which districts need not be coterminous with, nor have any relation to, the wards or precincts that may be created by the police jury or cities or towns within and for said parish or city, but any such special school board election districts created as a result of this Subpart must be compact and contiguous. The board may provide that all or part of its members shall be elected from such districts and may provide

that one or more of its members may be elected at large from each of such districts.

C. Repealed by Acts 1980, No. 285, § 9, eff. July 14, 1980.

D. The special school board election districts provided for herein shall be for the purpose only of electing school board members and shall not be for the purpose of levying taxes or issuing bonds. The creation of such special election districts shall not affect existing tax or bonding districts and same shall remain in full force and effect as otherwise provided by law.

Added by Acts 1968, No. 561, § 1. Amended by Acts 1970, No. 319, § 1, emerg. eff. July 13, 1970 at 2:00 P.M.; Acts 1975, No. 432, §1.

WEST'S LOUISIANA STATUTES ANNOTATED
LOUISIANA REVISED STATUTES (1995)

TITLE 17. EDUCATION

CHAPTER 1. GENERAL SCHOOL LAW

PART II. PARISH SCHOOL BOARDS

SUBPART A-1. REAPPORTIONMENT AND REORGANIZATION

[The following is from the 1995 Pocket Part:]

§ 71.3. Procedure for accomplishing reapportionment, special election districts; effective date of same

[See main volume for A]

B. Each of said boards, after determining the number of members of said board after reapportionment is to be effective, may create such special school board election districts as it deems desirable. These districts need not be conterminous with the wards that may be created by any governing authority, but any such special school board election districts created as a result of this Subpart shall be compact and contiguous. After January 1, 1984 the boundaries of such election districts shall contain whole election precincts established by the parish governing authority under R.S. 18:532 or 532.1. The board may provide that all or part of its members shall be elected from such districts and may provide that one or more of its members may be elected at large from each of such districts.

Amended by Acts 1982, No. 558 § 1, eff. July 22, 1982.

[See main volume for C and D]

E. (1) The boundaries of any election district for a new apportionment plan from which members of a

school board are elected shall contain whole precincts established by the parish governing authority under R.S. 18:532 or 532.1.

(2)(a) Notwithstanding the provisions of R.S. 17:71.3(E)(1) or any other law to the contrary, if a school board is unable to meet the federal guideline of plus or minus five percent deviation in the creation of its reapportionment plan through the use of whole precincts, the school board may, in the creation of its reapportionment plan, divide a precinct into portions which are bounded by visible features which are census tabulation boundaries. No such precinct shall be divided into more than two school board districts. No school board district shall contain more than two divided precincts.

(b) The provisions of this Paragraph shall be applicable only in cases in which the number of members of the school board is not equal to the number of members of the parish governing authority of the parish in which the school board is domiciled.

(c) The provisions of this Paragraph shall not be construed as authority for a school board which has adopted or accomplished reapportionment or is able to reapportion itself using whole precincts to divide precincts. Any plan adopted by a school board in contravention of this Subsection shall be null and void.

(d) The provisions of this Paragraph shall become null and void on December 31, 1992, unless a school board receives an objection letter to its reapportionment plan from the Department of Justice. In such event the school board shall use the provisions of this Paragraph to satisfy the objections of the Department of Justice if said objections would require a precinct to be divided and the provisions of this Paragraph shall be null and void after such reapportionment is complete.

(3)(a) Notwithstanding the provisions of Paragraph (1) of this Subsection or any other law to the contrary, if a school board is unable to meet the federal guideline of plus or minus five percent deviation in the creation of its reapportionment plan through the use of whole precincts, the school board may create school board election districts that subdivide one or more precincts. No such precinct shall be subdivided into more than two school board districts. No school board district shall contain more than two subdivided precinct portions in addition to any whole precincts contained therein.

(b) The provisions of this Paragraph shall be applicable only in parishes having a population of ten thousand or fewer according to the latest decennial census and in which there are fifteen or fewer election precincts.

(c) The provisions of this Paragraph shall not be construed as authority for a school board which is able to reapportion itself using whole precincts to subdivide precincts. Any plan adopted by a school board in contravention of this Subsection shall be null and void.

(d) The provisions of this Paragraph shall become null and void on December 31, 1993, provided that if the United States attorney general objects to the reapportionment plan of a school board operating under the provisions of this Paragraph, the school board may act under the provisions of this Paragraph to create a reapportionment plan to which the attorney general interposes no objection, if the plan would require one or more precincts to be subdivided. Following the adoption of such plan, the provisions of this Paragraph shall be null and void.

Added by Acts 1992, No. 925, § 1. Amended by Acts 1993, No. 286, § 1, eff. June 2, 1993.

WEST'S LOUISIANA STATUTES ANNOTATED
LOUISIANA REVISED STATUTES (1995)

TITLE 18. LOUISIANA ELECTION CODE

CHAPTER 5. PRIMARY AND GENERAL ELECTIONS

PART II. ELECTION OFFICIALS

SUBPART A. GENERAL PROVISIONS

§ 425.1. Consolidation of polling places; reduction of voting machines and election officials

A. Notwithstanding the provisions of R.S. 18:424 and 425 or any other provision of law to the contrary, in an election, including the election of any public official, where more than one polling place is within the same location, the parish board of election supervisors may consolidate polling places in that location for that election and may reduce the number of voting machines to be used in the election below the number fixed by R.S. 18:1363 and, in such case, shall notify the parish custodian of voting machines and the commissioner of elections of the number of machines to be prepared and delivered for the polling places so consolidated.

B. When the parish board of election supervisors consolidates polling places as authorized by Subsection A of this Section, it shall appoint a commissioner-in-charge to serve at each such consolidated polling place and may reduce to not less than two the number of commissioners and alternate commissioners to be appointed to serve at each such polling place.

Added by Acts 1986, No. 705, § 1.

WEST'S LOUISIANA STATUTES ANNOTATED
LOUISIANA REVISED STATUTES (1995)

TITLE 18. LOUISIANA ELECTION CODE

CHAPTER 5. PRIMARY AND GENERAL ELECTIONS

PART V. VOTERS AND VOTING

SUBPART B. PLACES FOR VOTING

§ 532. Establishing of precincts

A. Subject to the provisions of R.S. 18:532.1 and 1903, the governing authority of each parish shall establish precincts, define the territorial limits for which each precinct is established, prescribe their boundaries, and designate the precincts. The governing authority of each parish shall be ordinance adopt the establishment and boundaries of each precinct in accordance with the timetable as set forth herein and in accordance with R.S. 18:532.1.

B. (1) Each precinct shall be a contiguous, compact area having clearly defined and clearly observable boundaries coinciding with visible features readily distinguishable on the ground such as designated highways, roads, streets, rivers, or canals, except where the precinct boundary is coterminous with the boundary of a parish or an incorporated place when the boundaries of a single precinct contain the entire geographic area of the incorporated place.

(2) No precinct shall be wholly contained within the territorial boundaries of another precinct, except that a precinct which contains the entire geographical area of an incorporated place and in which the total number of registered voters at the last general election was less than two hundred fifty may be so contained.

(3) No precinct shall contain more than two thousand two hundred registered voters within its geographic boundaries. Within thirty days after the completion of each canvass, the registrar of voters of each parish shall notify the parish governing authority of every precinct in the parish which contains more than two thousand two hundred registered voters within its geographic boundaries. Within sixty days of such notification, the parish governing authority shall divide such precincts by a visible feature in accordance with R.S. 18:532.1.

C. Each parish governing authority shall provide and maintain at all times a suitable map showing the current geographical boundaries with designation of precincts and a word description of the precinct geographical boundaries. Each parish governing authority shall send a copy of each map, with description attached, to the registrar of voters, the secretary of state, and the commissioner of elections. The map may be composed of one or more sheets but each sheet shall not exceed three feet by four feet. The map shall include all existing roads, streets, railroad tracks, and drainage features but shall not include underground utility lines, land use and zoning symbols or shadings, symbols for vegetation cover, topographic contour lines, and similar items that obscure the basic street pattern and names. All features, names, titles, and symbols on the map shall be clearly shown and legible. The map sheet of the entire parish shall be on a scale of one inch equals one mile to one inch equals two miles. Map sheets of each incorporated place within the parish shall be on a scale of one inch equals eight hundred feet to one inch equals sixteen hundred feet. Each map sheet shall indicate the date of the base map or the date of last revision. Wherever the boundaries of a precinct or incorporated place are coterminous, they shall be clearly indicated as such.

D. The parish governing authority shall also furnish, a map clearly indicating the boundaries of each parish governing authority district, school board district, special election district, representative district, and senate district.

E. (1) In complying with the provisions of this Section for the establishment of precincts and the prescription of their boundaries, each parish governing authority and registrar of voters shall coordinate with the secretary of the Senate and the clerk of the House of Representatives, or their designees, pursuant to their authority to submit a plan for census data for reapportionment under the provisions of Chapter 13 of Title 18 of the Louisiana Revised Statutes of 1950, and shall adopt or adjust precinct boundaries as may be necessary to comply with this Section.

(2) Each parish governing authority shall by ordinance adopt a proposal for the establishment or adjustment of precinct boundaries, in compliance with this Section, no later than June 15, 1986, provided that any establishment of a precinct or adjustment of a precinct boundary to comply with this Section shall be effective for the following purposes at the following times:

(a) Not later than January 1, 1990, for the purpose of establishing block boundaries for the 1990 federal decennial census.

(b) Not later than forty-five days prior to the opening date for qualifying as a candidate for any election held at the 1991 gubernatorial primary election, for all purposes. Within fifteen days after the adoption of the ordinance, the parish governing authority shall send to the secretary and the clerk a certified copy of the ordinance and a copy of a map showing the new boundaries together with a written description of such boundaries.

(3) If any parish governing authority fails to comply with the provisions of this Section by June 15, 1986, the secretary of the Senate and the clerk of the House of Representatives, or their designees, shall immediately notify the attorney general of such noncompliance. The attorney general shall, upon receipt of such notice, in accordance with R.S. 18:537 institute an action against said governing authority to compel compliance with this Section.

(4) Notwithstanding the provisions of R.S. 18:532.1(A) and (B) or any other law to the contrary, the proposed precinct boundaries submitted to the United States Bureau of the Census by a parish through the secretary of the Senate and the clerk of the House of Representatives or their designees, and approved by the Bureau of the Census as block boundaries for the 1990 Census, shall be the precinct boundaries of any parish in which the parish governing authority has failed to adopt by ordinance on or before December 31, 1988 a proposal for the establishment or adjustment of precinct boundaries as required by this Section. The precinct boundaries established pursuant to the provisions of this Paragraph shall be effective as provided in R.S. 18:532(E)(2).

Amended by Acts 1982, No. 559, § 1, eff. July 22, 1982; Acts 1985, No. 670, § 1, eff. July 16, 1985; Acts 1986, No. 286, § 1, eff. June 30, 1986; Acts 1988, No. 329, § 1; Acts 1988, No. 403, § 1, eff. July 10, 1988; Acts 1990, No. 629, § 1; Acts 1992, No. 788, § 1, eff. Jan. 1, 1993; Acts 1992, No. 803, § 1.

* * * *

§ 532.1 Changing precinct boundaries

A. The parish governing authority shall have author-

ity, in accordance with this Section, to change the configuration, boundaries, or designation of an election precinct. Any change so determined shall be adopted by ordinance of the parish governing authority. Within fifteen days after adoption of the ordinance, the parish governing authority shall send to the secretary of state a certified copy of the ordinance and a copy of the map showing the new precinct boundaries and designations together with a written description of such boundaries. The parish governing authority shall comply with the provisions of R.S. 18:1941 when changing precinct boundaries.

B. After June 15, 1986, a parish governing authority shall only change a precinct by dividing the precinct into two or more precincts except:

(1) Repealed by Acts 1990, No. 629, § 2.

(2) When in order to make it more convenient for voters to vote, or to facilitate the administration of the election process, or to accomplish reapportionment, it becomes necessary to consolidate all or part of a precinct with adjacent precincts, a part or parts may be consolidated but only when the parts that are joined are in the same voting district.

(3) Any establishment, division, or consolidation of precincts as provided in Paragraphs (1) and (2) herein shall be considered a change in precinct boundaries and shall be subject to the requirements of this Section.

C. (1) The parish governing authority shall comply with the provisions of R.S. 18:532(A), (B), and (C) when changing any precinct boundary. Prior to January 1, 1993, any precinct boundary resulting from an establishment of a precinct or precincts or change in precinct boundary shall coincide with a visible feature which is a tabulation boundary depicted on United States Bureau

of the Census maps prepared for the 1990 federal decennial census. After December 31, 1992, any precinct boundary resulting from an establishment of a precinct or precincts or change in precinct boundary shall coincide with a visible feature depicted on a base map that will be used by the United States Bureau of the Census to determine visible tabulation boundaries for the federal decennial census.

(2)(a) In determining features to be used as precinct boundaries, the parish governing authority shall consult with the secretary of the Senate and the clerk of the House of Representatives or their designees. The parish governing authority shall submit proposed changes in precinct boundaries to the secretary and the clerk or their designees on United States Bureau of the Census maps prepared for the 1990 federal decennial census and, where practicable, by electronic medium. No change in a precinct boundary may be made by the parish governing authority without prior review and approval by the secretary and the clerk or their designees, except as provided in this Subparagraph. Such review shall consist of a determination whether the proposed precinct change coincides with a visible feature depicted on a base map that will be used by the United States Bureau of the Census to determine visible tabulation boundaries for the federal decennial census.

(b) The secretary of the Senate and the clerk of the House of Representatives or their designees shall send a report of the findings resulting from the review to the parish governing authority within forty-five days after the receipt of the proposed precinct changes. If the secretary of the Senate and the clerk of the House of Representatives or their designees fail to respond within forty-five days after the receipt of the proposed

precinct changes, the proposed visible feature for precinct boundaries shall be deemed to be approved by the secretary of the Senate and the clerk of the House of Representatives or their designees.

(3)(a) In addition to the requirements of Paragraph (2) of this Subsection, when the proposed precinct change involves a consolidation authorized by Paragraph B(2) of this Section, prior to adoption by ordinance, the parish governing authority shall submit proposed changes of the consolidation to the commissioner of elections. No change in a precinct consolidation may be made by the parish governing authority without prior review and approval by the commissioner of elections, except as provided in this Subparagraph. Such review shall consist of a determination whether the proposed consolidation of the precincts establishes a precinct or precincts where all parts of each proposed new precinct are in the same voting district.

(b) The commissioner of elections shall send a report of the findings resulting from the review to the parish governing authority within forty-five days after the receipt of the proposed precinct changes. If the commissioner of elections fails to respond within forty-five days after the receipt of the proposed precinct consolidations, the proposed consolidations shall be deemed to be approved by the commissioner of elections. No precinct shall be consolidated until all local governing authorities and the parish or city school board within the area affected by the consolidation have completed redistricting and been precleared by the United States Department of Justice.

D. In accordance with R.S. 18:1903, on and after January 1, 1989, no election precinct shall be created, divided, abolished, or consolidated, or the boundaries thereof otherwise changed between January first of any

year which last digit is nine and December thirty-first of any year which last digit is zero, unless ordered by a court of competent jurisdiction.

E. (1) A precinct shall not be changed, and no precinct shall be established or altered in any way as a result of annexation, alphabetical division by voter surname, or otherwise during the period commencing on the date the qualifying period opens and ending on the date of the general election.

(2) For an election which is exclusively for bonds, taxes, and other propositions or questions and for no other kind of election, a precinct shall not be changed during the period commencing on the forty-sixth day prior to the election and ending on the date of the election.

(3) No precinct change that is made prior to the date the qualifying period opens or, in the case of an election exclusively for bonds, taxes, and other propositions or questions, prior to the forty-sixth day before the election shall become effective for those elections, respectively, unless the information required in Subsection A herein, including a statement of no objection to the change from the United States attorney general, is received by the secretary of state prior to the date the qualifying period opens or prior to the forty-sixth day before the election, as the case may be.

F. Within fifteen days after the adoption of the ordinance as provided in the Section, the parish governing authority shall send to the secretary of the Senate and the clerk of the House of Representatives as well as the secretary of state and commissioner of elections a certified copy of the ordinance and a copy of a map showing the new precinct boundaries together with a written description of such boundaries.

G. Repealed by Acts 1993, No. 418, § 2, eff. Jan. 1, 1994.

H. The provisions of this Subsection shall supercede the provisions of R.S. 18:532.1(A), (B), (D), and R.S. 18:1903, and any other law to the contrary.

(1) The precinct boundaries submitted to the United States Bureau of the Census by a parish through the secretary of the Senate and the clerk of the House of Representatives or their designees, and approved by the Bureau of the Census as block boundaries for the 1990 Census, shall not be divided, abolished, consolidated, or the boundaries otherwise changed until after December 31, 1992, unless ordered by a court of competent jurisdiction.

(2) Notwithstanding the provision contained in R.S. 18:532.1(H)(1), if a parish is unable to meet applicable state and federal guidelines in the creation of its reapportionment plan, such parish may divide a precinct into two or more precincts by a visible feature which is a census tabulation boundary during the time period of April 1, 1991 through May 15, 1991.

(a) Such parish shall include such precinct changes in its ordinance defining such reapportionment plan.

(b) A certified copy of the ordinance including any such precinct changes and reapportionment plan must be sent to the secretary of state, the secretary of the Senate, the clerk of the House of Representatives, and the registrar of voters of the parish within fifteen days after the adoption of the ordinance.

(c) In the event that the Department of Justice objects to a parish reapportionment plan, such parish may divide a precinct into two or more precincts by a visible feature which is a census tabulation boundary in

order to satisfy said objections of the Department of Justice.

(d) Such precincts shall not be divided, abolished, or consolidated or the boundaries otherwise changed during the time period of September 1, 1991 through December 31, 1992.

Added by Acts 1982, No. 559, § 1, eff. July 22, 1982. Amended by Acts 1985, No. 670, § 1, eff. July 16, 1985; Acts 1986, No. 286, § 1, eff. June 30, 1986; Acts 1987, No. 831, § 1, eff. Jan. 1, 1988; Acts 1988, No. 329, § 1; Acts 1988, No. 909, § 1; Acts 1990, No. 288, § 1, eff. July 5, 1990; Acts 1990, No. 629, § 1; Acts 1992, No. 803, § 1; Acts 1993, No. 418, § 1, eff. Jan. 1, 1994.

WEST'S LOUISIANA STATUTES ANNOTATED
LOUISIANA REVISED STATUTES (1995)

TITLE 18. LOUISIANA ELECTION CODE

CHAPTER 8-A. ELECTION EXPENSES

§ 1400.1 Election costs paid by secretary of state; governing authorities; reimbursement

A. The cost of ballots and election materials used in gubernatorial and congressional elections, whether or not a gubernatorial or congressional candidate appears on the ballot, shall be paid by the state from funds appropriated to the secretary of state for that purpose, except that when a local or municipal candidate or a local bond, debt, tax, proposition, or question also appears on the ballot, the state shall be required to pay one-half of the cost of ballots and election materials. The remaining one-half shall be pro-rated between the state and all local or municipal entities participating in such election. The pro-rata share of a local or municipal entity shall be determined by dividing the number of that entity's offices, propositions, or questions on the ballot by the total number of all offices, propositions, or questions on the ballot within that local jurisdiction.

B. (1) The cost of ballots and election materials used in any special election when any of the following appear on the ballot shall be paid by the state from funds appropriated to the secretary of state for that purpose:

(a) A state candidate, as defined in R.S. 18:452(1).

(b) A candidate for the state legislature.

(c) A candidate for judge of a judicial district court or juvenile court or a candidate for judge of the criminal district or civil district court for Orleans Parish.

(d) A candidate for the office of district attorney.

(e) A proposed constitutional amendment.

(2) Notwithstanding the provisions of Paragraph (1), when a local or municipal candidate or a local bond, debt, tax, proposition, or question also appears on the ballot, the state shall be required to pay one-half of the cost of ballots and election materials. The remaining one-half shall be pro-rated between the state and all local or municipal entities participating in such election. The pro-rata share of a local or municipal entity shall be determined by dividing the number of that entity's offices, propositions, or questions on the ballot by the total number of all offices, propositions, or questions on the ballot within that local jurisdiction.

C. (1) The cost of ballots and election materials used in any election not provided for in Subsections A and B of this Section shall be paid by the appropriate governing authority that relates to the character of the office or the issue involved in such election.

(2) In any special election called only by a local governing authority or only by a parish or city school board solely for the purpose of voting on a proposition under Chapter 6–A of this Title, a fee of five dollars per certificate and two dollars per page shall be paid to the secretary of state for recording the process verbal as required by R.S. 18:1293.

(3) To administratively facilitate the payment of costs as provided in this Subsection, the secretary of state may initially pay such costs; however, the appropriate governing authority shall reimburse all such costs to the secretary of state, and all monies so received by the secretary of state shall be remitted to the state treasurer. If more than one governing authority is involved in an

election, the secretary of state shall prorate the reimbursable costs among the governing authorities as equitably as possible.

Added by Acts 1983, No. 681, § 1, eff. July 21, 1983. Amended by Acts 1986, No. 783, § 1, eff. July 10, 1986; Acts 1990, No, 107, § 1, eff. Jan. 1, 1991; Acts 1992, No. 963, § 1.

* * * * *

§ 1400.2. Election costs paid by commissioner of elections; governing authorities; reimbursement

A. The costs of publication of the location of polling places; of renting polling places; of drayage; of setting up voting machines; of compensating commissioners and deputy parish custodians; and of transmitting election returns for gubernatorial and congressional elections, whether or not a gubernatorial or congressional candidate appears on the ballot, shall be paid by the state from funds appropriated to the commissioner of elections for that purpose except that when a local or municipal candidate or a local bond, debt, tax, proposition, or question also appears on the ballot, the state shall be required to pay one-half of such costs. The remaining one-half shall be pro-rated between the state and all local or municipal entities participating in such election. The pro-rata share of a local or municipal entity shall be determined by dividing the number of that entity's offices, propositions, or questions on the ballot by the total number of all offices, propositions, or questions on the ballot within that local jurisdiction.

B. (1) The cost of publication of the location of polling places; of renting polling places; of drayage; of setting up voting machines; of compensating commissioners and

deputy parish custodians; and of transmitting election returns for any special election when any of the following appear on the ballot shall be paid by the state from funds appropriated to the commissioner of elections for that purpose:

(a) A state candidate as defined in R.S. 18:452(1).

(b) A candidate for the state legislature.

(c) A candidate for judge of a judicial district court or juvenile court or a candidate for judge of the criminal district or civil district court for Orleans Parish.

(d) A candidate for the office of district attorney.

(e) A proposed constitutional amendment.

(2) Notwithstanding the provisions of Paragraph (1), when a local or municipal candidate or a local bond, debt, tax, proposition, or question also appears on the ballot, the state shall be required to pay one-half of such costs. The remaining one-half shall be pro-rated between the state and all local or municipal entities participating in such election. The pro-rata share of a local or municipal entity shall be determined by dividing the number of that entity's offices, propositions, or questions on the ballot by the total number of all offices, propositions, or questions on the ballot within that local jurisdiction.

C. (1) The cost of publication of the location of polling places; of renting polling places; of drayage; of setting up voting machines, which cost shall be ten dollars per machine; of compensating commissioners and deputy parish custodians; and of transmitting election returns for any election not provided for in Subsections A and B of this Section shall be paid by the appropriate governing authority that relates to the character of office or issue involved in such election. Except as provided in

Paragraph (2) of this Subsection, if more than one governing authority is involved in an election, a statement of such expenses shall be transmitted to each governing authority involved in the election and payment thereof shall be prorated among the governing authorities as equitably as possible.

(2) To administratively facilitate the payment of costs with respect to elections as provided in this Subsection, the commissioner of elections may initially pay such costs; however, the appropriate governing authority shall reimburse all such costs to the commissioner of elections, who shall remit all such funds to the state treasurer. If more than one governing authority is involved in an election, the commissioner of elections shall prorate its reimbursable costs among the governing authorities as equitably as possible.

Added by Acts 1983, No. 681, §1, eff. July 21, 1983. Amended by Acts 1986, No. 426, § 1; Acts 1986, No. 783, § 1, eff. July 10, 1986; Acts 1988, No. 909, § 1, eff. Jan. 1, 1989; Acts 1990, No. 107, § 1, eff. Jan. 1, 1991; Acts 1992, No. 963, §1.

* * * *

§ 1400.3 Election expenses incurred by clerks of court and registrars of voters; payment by commissioner of elections; payment by governing authorities

A. Election expenses incurred by clerks of court and registrars of voters for gubernatorial and congressional elections, whether or not a gubernatorial or congressional candidate appears on the ballot, shall be paid by the state from funds appropriated to the commissioner of elections for that purpose, except that when a local or municipal candidate or a local bond, debt, tax, proposition, or question also appears on the ballot, the state

shall be required to pay one-half of such costs. The remaining one-half shall be pro-rated between the state and all local or municipal entities participating in such election. The pro-rata share of a local or municipal entity shall be determined by dividing the number of that entity's offices, propositions, or questions on the ballot by the total number of all offices, propositions, or questions on the ballot within that local jurisdiction.

B. (1) Election expenses incurred by clerks of court and registrars of voters for any special election when any of the following appear on the ballot shall be paid by the state from funds appropriated to the commissioner of elections for that purpose:

(a) A state candidate, as defined in R.S. 18:452(1).

(b) A candidate for the state legislature.

(c) A candidate for judge of a judicial district court or juvenile court or a candidate for judge of the criminal district or civil district court for Orleans Parish.

(d) A candidate for the office of district attorney.

(e) A proposed constitutional amendment.

(2) Notwithstanding the provisions of Paragraph (1), when a local or municipal candidate or a local bond, debt, tax, proposition, or question also appears on the ballot, the state shall be required to pay one-half of such costs. The remaining one-half shall be pro-rated between the state and all local or municipal entities participating in such election. The pro-rata share of a local or municipal entity shall be determined by dividing the number of that entity's offices, propositions, or questions on the ballot by the total number of all offices, propositions, or questions on the ballot within that local jurisdiction.

(C) (1) Election expenses incurred by clerks of court and registrars of voters for any election not provided for in Subsections A and B of this Section shall be paid by the appropriate governing authority that relates to the character of office or issue involved in such election. Except as provided in Paragraph (2) of this Subsection, if more than one governing authority is involved in an election, a statement of such expenses shall be transmitted to each governing authority and payment thereof shall be prorated among the governing authorities as equitably as possible.

(2) To administratively facilitate the payment of costs with respect to elections as provided in this Subsection, the commissioner of elections may initially pay such costs; however, the appropriate governing authority shall reimburse all such costs to the commissioner of elections, who shall remit all such funds to the state treasurer. If more than one governing authority is involved in an election, the commissioner of elections shall prorate its reimbursable costs among the governing authorities as equitably as possible.

D. For the purposes of this Section, "election expenses incurred by registrars of voters" is defined and limited to the following:

(1) Expenses incurred by a registrar of voters to pay for one or more temporary part-time clerical employees to perform election duties and responsibilities associated with his office as provided in this Title. Such employees shall be paid at an hourly rate established by the registrar at not to exceed that of a Voter Registration Specialist in the General Schedule at the entry level as specified in the classification and pay plan of the Louisiana Department of Civil Service.

(2) Expenses incurred by a registrar of voters to pay a permanent employee below the level of chief deputy and confidential assistant to perform election duties and responsibilities associated with his office during other than normal hours of operation of his office.

(3) Expenses of an extraordinary nature incurred by a registrar of voters for an election which have received prior approval of the commissioner of elections.

E. For the purpose of this Section, "election expenses incurred by clerks of court" is defined and limited to the following:

(1) Actual expenses incurred by a clerk of court to publish notices required by law in the official journal of the parish and, to insure maximum coverage, in any other journal of the parish or political subdivision thereof. Information contained in such notices shall be limited to that required by law. The commissioner of elections shall prescribe the size of such notices which shall be uniform throughout the state.

(2) Itemized expenses incurred by a clerk of court to conduct the general courses of instruction for commissioners as provided in R.S. 18:431(A) and the course of instruction for commissioners-in-charge as provided in R.S. 18:433(A).

(3)(a) Documented expenses incurred by a clerk of court to perform or fulfill election duties imposed by law. For the purpose of this Paragraph, such expenses shall include the following:

(i) Expenses for postage and office supplies used in connection with an election or used to fulfill an election duty imposed by law.

(ii) Expenses for rental space and instructional paraphernalia to conduct schools of instruction for commissioners and commissioners-in-charge.

(iii) Expenses for personnel used in connection with an election or used to fulfill an election duty imposed by law. Such expenses shall be itemized and reimbursement shall be authorized only for work not performed during regular office hours of the clerk of court.

(iv) Incidental expenses incurred in conducting the general courses of instruction for commissioners and the course of instruction for commissioners-in-charge. Reimbursement for such expenses shall be limited to one hundred dollars per general commissioner school and one hundred dollars for the commissioner-in-charge school. Maximum reimbursement to a clerk of court for conducting such schools shall be limited to three hundred dollars per calendar year and all reimbursements shall be deposited in the general fund of the clerk of court.

(b) The commissioner of elections shall establish rules and regulations governing reimbursement for expenses set forth herein and may establish rules and regulations to add other categories of reimbursable expenses. All reimbursements shall be deposited in the general fund of the clerk.

(4) Expenses of an extraordinary nature incurred by a clerk of court for an election which have received prior approval of the commissioner of elections.

Added by Acts 1983, No. 681, § 1, eff. July 21, 1983. Amended by Acts 1986, No. 669, § 1; Acts 1986, No. 783, § 1, eff. July 10, 1986; Acts 1988, No. 909, § 1, eff. Jan. 1, 1989; Acts 1990, No. 107, § 1, eff. Jan. 1, 1991; Acts 1992, No. 963, § 1.

Supreme Court of the United States

No. 95-1455

JANET RENO, ATTORNEY GENERAL, APPELLANT

v.

BOSSIER PARISH SCHOOL BOARD, ET AL.

[Filed June 3, 1996]

APPEAL from the United States District Court for the District of Columbia.

The statement of jurisdiction in this case having been submitted and considered by the Court, in this case probable jurisdiction is noted.

Supreme Court of the United States

No. 95-1508

GEORGE PRICE, ET AL., APPELLANTS

v.

BOSSIER PARISH SCHOOL BOARD, ET AL.

[Filed June 3, 1996]

APPEAL from the United States District Court for the District of Columbia.

The statement of jurisdiction in this case having been submitted and considered by the Court, in this case probable jurisdiction is noted.

(5) (4)

Nos. 95-1455 and 95-1508

Supreme Court, U.S.
FILED
AUG 01 1996
OFFICE OF THE CLERK

In the Supreme Court of the United States

OCTOBER TERM, 1995

JANET RENO, ATTORNEY GENERAL OF THE UNITED STATES, APPELLANT

v.

BOSSIER PARISH SCHOOL BOARD

GEORGE PRICE, ET AL., APPELLANTS

v.

BOSSIER PARISH SCHOOL BOARD

ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF COLUMBIA

BRIEF FOR THE FEDERAL APPELLANT

WALTER DELLINGER
Acting Solicitor General

DEVAL L. PATRICK
Assistant Attorney General

PAUL BENDER
Deputy Solicitor General

CORNELIA T.L. PILLARD
Assistant to the Solicitor General

DAVID K. FLYNN
STEVEN H. ROSENBAUM
SAMUEL R. BAGENSTOS
Attorneys

Department of Justice
Washington, D.C. 20530
(202) 514-2217

51pp

QUESTIONS PRESENTED

1. Whether a district court assessing a covered jurisdiction's purpose under Section 5 of the Voting Rights Act of 1965, 42 U.S.C. 1973c, may disregard factors this Court has held are relevant to proof of discriminatory purpose, on the ground that such evidence is also relevant to show vote dilution under Section 2, 42 U.S.C. 1973.

2. Whether the district court clearly erred in finding no discriminatory purpose.

3. Whether a voting change that clearly violates Section 2 of the Voting Rights Act is entitled to preclearance under Section 5 of the Act.

TABLE OF CONTENTS

	Page
Opinion below	1
Jurisdiction	1
Statutory provisions involved	1
Statement	2
Summary of argument	14
Argument:	
I. The district court erred in concluding that the Bossier Parish School Board adopted the Police Jury redistricting plan without any discriminatory purpose	16
A. The district court committed legal error by categorically refusing to consider the dilutive effect of the Board's decision and the Board's history of discrimination	16
B. Other record evidence, together with the evidence the district court erroneously failed to consider, demonstrates that the Board acted with a discriminatory purpose in adopting the Police Jury plan	24
C. The district court erred in finding that the Board had any legitimate, nondiscriminatory reason for adopting the Police Jury plan	29
II. A plan that dilutes minority voting strength in violation of Section 2 of the Voting Rights Act is not entitled to preclearance under Section 5 of the Act	33
Conclusion	44

TABLE OF AUTHORITIES

Cases:	Page
Abbott Laboratories v. *Gardner*, 387 U.S. 136 (1967)	35
Allen v. *State Bd. of Elections*, 393 U.S. 544 (1969)	35

Cases—Continued: Page

Arizona v. *Reno*, 887 F. Supp. 318 (D.D.C. 1995), appeal dismissed, 116 S. Ct. 1037 (1996) 21
Beer v. *United States*, 425 U.S. 130 (1976) 15, 33, 35-36, 38, 42, 43
Bob Jones Univ. v. *United States*, 461 U.S. 574 (1983) 41
Brown v. *Board of Educ.*, 347 U.S. 483 (1954) 5
Busbee v. *Smith*, 549 F. Supp. 494 (D.D.C. 1982), aff'd, 459 U.S. 1166 (1983) 17, 22, 26, 28
City of Lockhart v. *United States*, 460 U.S. 125 (1983) 33, 39
City of Mobile v. *Bolden*, 446 U.S. 55 (1980) 17, 18, 21, 37
City of Pleasant Grove v. *United States*:
479 U.S. 462 (1987) 23, 30-31, 42
568 F. Supp. 1455 (D.D.C. 1983), aff'd, 479 U.S. 462 (1987) 17
City of Port Arthur v. *United States*:
459 U.S. 159 (1982) 23
517 F. Supp. 987 (D.D.C. 1981), aff'd, 459 U.S. 159 (1982) 17, 19
City of Richmond v. *United States*, 422 U.S. 358 (1975) 16, 23
Columbus Bd. of Educ. v. *Penick*, 443 U.S. 449 (1979) 18, 19
EEOC v. *Ethan Allen, Inc.*, 44 F.3d 116 (2d Cir. 1994) 32
Eccles v. *Peoples Bank*, 333 U.S. 426 (1948) 35
Garza v. *County of Los Angeles*, 918 F.2d 763 (9th Cir. 1990), cert. denied, 498 U.S. 1028 (1991) 26, 28
Johnson v. *De Grandy*, 114 S. Ct. 2647 (1994) 40-41, 43, 44
Ketchum v. *Byrne*, 740 F.2d 1398 (7th Cir. 1984), cert. denied, 471 U.S. 1135 (1985) 26
Lemon v. *Bossier Parish School Bd.*, 240 F. Supp. 709 (W.D. La. 1965), aff'd, 370 F.2d 847 (5th Cir.), cert. denied, 388 U.S. 911 (1967) 5

Cases—Continued: Page

Litton Fin. Printing Div. v. *NLRB*, 501 U.S. 190 (1991) 41, 42
Louisiana v. *United States*, 380 U.S. 145 (1965) 5
Major v. *Treen*, 574 F. Supp. 325 (E.D. La. 1983) .. 5
Miller v. *Johnson*, 115 S. Ct. 2475 (1995) 21, 22, 33, 44
Morse v. *Republican Party of Virginia*, 116 S. Ct. 1186 (1996) 35, 38, 39, 44
Morton Salt Co. v. *G.S. Suppiger Co.*, 314 U.S. 488 (1942) 35
NAACP v. *Hampton County Election Comm'n*, 470 U.S. 166 (1985) 42
New York v. *United States*, 874 F. Supp. 394 (D.D.C. 1994) 21
Personnel Administrator v. *Feeney*, 442 U.S. 256 (1979) 18
Presley v. *Etowah County Comm'n*, 502 U.S. 491 (1992) 42
Pubilc Serv. Comm'n v. *Wycoff Co.*, 344 U.S. 237 (1952) 35
Pullman-Standard v. *Swint*, 456 U.S. 273 (1982) 18, 24, 32
Rogers v. *Lodge*, 458 U.S. 613 (1982) 16, 17, 18, 19, 20, 21, 41
Rybicki v. *State Bd. of Elections*, 574 F. Supp. 1082 (N.D. Ill. 1982) 26
Shaw v. *Hunt*, No. 94-923 (June 13, 1996) 22
Shaw v. *Reno*, 509 U.S. 630 (1993) 32
South Carolina v. *Katzenbach*, 383 U.S. 301 (1966) .. 34
Southwest Merchandising Corp. v. *NLRB*, 53 F.3d 1334 (D.C. Cir. 1995) 32
St. Mary's Honor Center v. *Hicks*, 509 U.S. 502 (1993) 32
Texas v. *United States*, Civ. Act. No. 94-1529 (D.D.C. July 10, 1995) 23
Thornburg v. *Gingles*, 478 U.S. 30 (1986) 29, 37, 38
United States v. *Board of Comm'rs*, 435 U.S. 110 (1978) 39, 41, 42
United States v. *Virginia*, No. 94-1941 (June 26, 1996) 31

Cases—Continued: Page

Village of Arlington Heights v. *Metropolitan Housing Dev. Corp.*, 429 U.S. 252 (1977) 14, 16, 17, 18, 20, 21, 24, 27
Washington v. *Davis*, 426 U.S. 229 (1976) 16, 18
White v. *Regester*, 412 U.S. 755 (1973) 36
Wilton v. *Seven Falls Co.*, 115 S. Ct. 2137 (1995) .. 35
Zimmer v. *McKeithen*, 485 F.2d 1297 (5th Cir. 1973), aff'd *sub nom. East Carroll Parish School Bd.* v. *Marshall*, 424 U.S. 636 (1975) 40

Constitution, statutes and regulations:

U.S. Const. Amend. XIII 5
Declaratory Judgment Act, 28 U.S.C. 2201 34-35
Voting Rights Act Amendments of 1982, Pub. L. No. 97-205, § 2(b)(4), 96 Stat. 133 (1982) 37
Voting Rights Act of 1965, 42 U.S.C. 1973 *et seq.*:
§ 2, 42 U.S.C. 1973 ..... *passim*
§ 2(a), 42 U.S.C. 1973(a) 2, 37
§ 2(b), 42 U.S.C. 1973(b) 2, 37
§ 5, 42 U.S.C. 1973c ..... *passim*
28 C.F.R.:
Section 51.52(a) 34
Section 51.55(b)(2) 2, 13, 15-16, 33, 40

Miscellaneous:

50 Fed. Reg. (1985):
p. 19,122 39
p. 19,131 39
52 Fed. Reg. 487 (1987) 40, 41
H.R. Rep. No. 227, 97th Cong., 1st Sess. (1981) 38
Proposed Changes to Regulations Governing Section 5 of the Voting Rights Act: Oversight Hearings Before the Subcomm. on Civil and Constitutional Rights of the House Comm. on the Judiciary, 99th Cong., 1st Sess. (1985) 40, 41
S. Rep. No. 417, 97th Cong., 2d Sess. (1982) 33, 38, 40
Subcomm. on Civil and Constitutional Rights of the House Comm. on the Judiciary, 99th Cong., 2d Sess., *Ser. No. 9, Voting Rights Act: Proposed Section 5 Regulations* (Comm. Print 1986) 41

In the Supreme Court of the United States

OCTOBER TERM, 1995

Nos. 95-1455 and 95-1508

JANET RENO, ATTORNEY GENERAL OF THE UNITED STATES, APPELLANT

v.

BOSSIER PARISH SCHOOL BOARD

GEORGE PRICE, ET AL., APPELLANTS

v.

BOSSIER PARISH SCHOOL BOARD

ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF COLUMBIA

BRIEF FOR THE FEDERAL APPELLANT

OPINION BELOW

The opinion of the three-judge district court (J.S. App. 1a-65a) is reported at 907 F. Supp. 434 (D.D.C. 1995).

JURISDICTION

The judgment of the three-judge district court was entered on November 2, 1995. A notice of appeal was filed on December 27, 1995. J.S. App. 163a-164a. The Court noted probable jurisdiction on June 3, 1996. The jurisdiction of this Court is invoked under 28 U.S.C. 1253 and 42 U.S.C. 1973c.

STATUTORY PROVISIONS INVOLVED

The relevant statutory provisions are Sections 2 and 5 of the Voting Rights Act of 1965, 42 U.S.C. 1973, 1973c. J.S. App. 165a-167a. This case also involves a provision

of the Procedures for the Administration of Section 5, 28 C.F.R. 51.55(b)(2). J.S. App. 168a.

STATEMENT

1. Congress enacted the Voting Rights Act of 1965 to eliminate racial discrimination in voting. Section 5 of the Act, 42 U.S.C. 1973c, provides that a covered jurisdiction may not implement any change affecting voting unless it first obtains judicial or administrative preclearance. A covered jurisdiction may obtain judicial preclearance of a voting change by establishing in a declaratory judgment action in the United States District Court for the District of Columbia that the change "does not have the purpose and will not have the effect of denying or abridging the right to vote on account of race or color." 42 U.S.C. 1973c. Alternatively, a covered jurisdiction may submit the voting change to the Attorney General for administrative preclearance. The change may be enforced if, within 60 days after its submission to her, the Attorney General has interposed no objection to it. There is no dispute that the Bossier Parish School Board redistricting plan involved in this case is a change in an election practice by a jurisdiction that is covered by the requirements of Section 5. See J.S. App. 140a-141a (¶¶ 249, 251).

Section 2 of the Act, as amended in 1982, 42 U.S.C. 1973, prohibits any voting practice "which results in a denial or abridgement of the right of any citizen of the United States to vote on account of race or color." 42 U.S.C. 1973(a). A voting practice violates Section 2 if it has the discriminatory effect of denying minority citizens an equal opportunity to participate in the electoral process and to elect representatives of their choice. 42 U.S.C. 1973(b).

2. a. This appeal arises from a declaratory judgment action by the Bossier Parish School Board (Board) for preclearance of a redistricting plan. The 12-member

Board governs the Bossier Parish School District, which is coterminous with the parish. J.S. App. 3a-4a. The Board is elected from single-member districts for four-year, concurrent terms. A majority-vote requirement applies to elections of Board members. *Id.* at 4a. The Board redistricted following the 1990 census in order to eliminate population malapportionment among its districts.

In 1990, black persons comprised 20.1% of the total population of Bossier Parish, and 17.6% of the voting age population. J.S. App. 2a. As of 1994, blacks comprised 15.5% of Bossier Parish's registered voters. *Ibid.* The black population of the parish is concentrated in two areas: More than 50% of the black residents live in Bossier City, *id.* at 68a (¶ 10), and the remaining black population is concentrated in four populated areas in the northern rural portion of the parish, *id.* at 2a, 68a (¶ 10).[1] The parties have stipulated that it is feasible to draw two reasonably compact black-majority districts in Bossier Parish using traditional redistricting features such as roads, streams, railroads, and corporate boundaries: one in Bossier City, *id.* at 76a (¶ 36), and one in the northern rural area of the parish, *id.* at 114a (¶ 148); see *id.* at 113a-115a (¶¶ 143-150).

The parties also have stipulated to facts showing that voting in the parish is racially polarized, J.S. App. 40a, 122a-127a (¶¶ 181-196); see also J.A. 113-121 (Engstrom declaration), and that "voting patterns in Bossier Parish are affected by racial preferences," J.S. App. 122a (¶ 181). At the time the Board voted to adopt the redistricting plan at issue in this case, black candidates had

[1] The northern rural portion of the parish is sparsely populated in comparison with the rest of the parish, with more densely populated communities separated by large, lightly settled areas. In the School Board redistricting plan at issue in this case, that portion of the parish is encompassed in a single, 33.5-mile-long, 424-square-mile district. The district encompasses almost half of the area of Bossier Parish. J.S. App. 114a-115a (¶ 149); *id.* at 112a (¶ 140).

run for election to the Board on at least four occasions, but none had ever been elected. *Id.* at 4a, 115a (¶ 153); see also J.A. 54-60. Black voters historically have also been unable to elect candidates of their choice to other political positions in Bossier Parish. J.S. App. 118a-172a (¶¶ 153-196). Of the 14 elections in the parish since 1980 in which a black candidate has run against a white candidate in a single-member district or for mayor, only two black candidates have won. *Id.* at 127a (¶ 196); see also J.A. 54-60. One was a candidate for the Bossier Parish Police Jury,[2] and the other for the Bossier City Council. *Ibid.* The black Police Juror won in Police Jury District 10, which contained a United States Air Force base, J.S. App. 117a (¶¶ 160-161), and the black City Council member won in a city council district that substantially overlapped with Police Jury District 10, and also included the Air Force base, *id.* at 120a (¶ 172). The district court found that the Base is a factor unique to those districts that increased the ability of black voters in that area to elect representatives of their choice. *Id.* at 2a n.1.[3]

Bossier Parish and its School Board have a history of racial discrimination beginning before the Civil War and continuing to the present. See generally J.S. App. 42a-

[2] The Police Jury is the governing body for the parish. See pages 6-7, *infra*.

[3] Many residents in and around the base do not vote in local elections, J.S. App. 117a-118a (¶¶ 160-163); that factor, together with the tendency of Air Force retirees who settle in the area to vote in a less racially polarized way than other Bossier Parish residents, increases the ability of black voters in the districts containing the Air Force base to elect representatives of their choice. *Id.* at 117a-118a (¶¶ 162-163), 127a (¶ 196). In the reconfigured plans adopted by the Police Jury in 1991 and the City Council in 1993, the Air Force base no longer has that effect. *Id.* at 2a n.1. The black incumbent Police Juror was reelected in 1991 in the redrawn district in an election in which he ran unopposed. *Ibid.* The black City Council member ran against a white opponent in 1993 and lost. *Id.* at 120a (¶ 173).

46a, 130a-140a (¶¶ 214-248).[4] De jure segregation prevailed in Louisiana's schools long after this Court decided *Brown* v. *Board of Educ.*, 347 U.S. 483 (1954). J.S. App. 136a (¶ 235). The Board has repeatedly sought to evade its desegregation obligations. *Id.* at 136a-137a (¶¶ 237-239). It remains under court order to remedy the vestiges of racial discrimination in its school system. See *Lemon* v. *Bossier Parish School Bd.*, 240 F. Supp. 709 (W.D. La. 1965), aff'd, 370 F.2d 847 (5th Cir.), cert. denied, 388 U.S. 911 (1967). Notwithstanding the Board's affirmative obligation to desegregate, the schools in Bossier Parish have, since 1980, become increasingly segregated by race. J.S. App. 137a-138a (¶¶ 240-242). Although black students comprise only 29% of the Parish's student population, four of the 27 schools in the Parish have student bodies that are more than 70% black. *Id.* at 138a (¶ 242).[5]

In addition to presiding over increasing racial segregation in parish school populations, the Board has violated the *Lemon* court's order by failing to maintain a biracial

[4] Many decades of discriminatory government action in Louisiana resulted in the large-scale disenfranchisement of black voters. Following the passage of the Thirteenth Amendment, Louisiana enacted laws intended to reduce black voting; black registration decreased by 90% within a few years. J.S. App. 130a-131a (¶¶ 215-219). In 1921, an amendment to the state Constitution required persons seeking to register to vote to "give a reasonable interpretation" of a constitutional provision. *Id.* at 132a (¶ 221). That clause, which disenfranchised most black citizens, was not invalidated until 1965. *Louisiana* v. *United States*, 380 U.S. 145 (1965). After an all-white Louisiana Democratic primary was invalidated, the party adopted other discriminatory election devices, including an anti-single-shot law and a majority-vote requirement for party office. J.S. App. 132a (¶ 222); *Major* v. *Treen*, 574 F. Supp. 325, 341 (E.D. La. 1983).

[5] Each of those four predominantly black schools is located within one of the two areas, Bossier City and the northern rural portion of the parish, J.S. App. 12a (¶ 142), in which a reasonably compact majority-black district may be drawn, *id.* at 76a (¶ 36); *id.* at 114a-115a (¶¶ 148-150).

committee to recommend ways to attain and maintain a unitary school system. J.S. App. 103a-104a (¶¶ 111-112). The Board first convened the committee in 1976, but only the black committee members attended the few meetings that were held, and the Board promptly disbanded the committee. *Ibid.* The Board did not convene another biracial committee until 1993, shortly after submitting its redistricting plan to the Justice Department for Section 5 review. *Id.* at 104a (¶ 113). The Board promptly disbanded that committee because, as School Board President Barry Musgrove explained, "the minority members of the committee quickly turned toward becoming involved in policy." *Id.* at 105a (¶ 116).

The effects of past discrimination in Bossier Parish continue today: "Black citizens of Bossier Parish suffer a markedly lower socioeconomic status than their white counterparts" that is "traceable to a legacy of racial discrimination affecting Bossier Parish's black citizens." J.S. App. 128a (¶ 200); see generally *id.* at 127a-130a (¶¶ 197-213). That status "makes it harder for blacks to obtain necessary electoral information, organize, raise funds, campaign, register, and turn out to vote, and this in turn causes a depressed level of political participation for black persons within Bossier Parish." *Id.* at 130a (¶ 213). Significantly smaller proportions of black voting-age citizens than white voting-age citizens have in fact registered to vote in Bossier Parish. *Id.* at 127a (¶ 197).

b. Following the 1990 census, redistricting efforts by the Bossier Parish Police Jury preceded the School Board redistricting. The Police Jury, like the School Board, consists of 12 members who are elected from single-member districts in the same manner as the Board. J.S. App. 2a. The Police Jury has never had a districting plan that contained any majority-black districts. *Ibid.*

During the 1990-1991 redistricting process, the white Police Jurors and their demographer knew that it was feasible to effectuate black political participation by adopting a non-dilutive redistricting plan. J.S. App. 76a (¶ 36), 82a-83a (¶ 53), 114 (¶ 148). Police Jurors nonetheless told citizens who advocated creating majority-black districts that it was impossible to create such districts because the black population was too dispersed. *Id.* at 3a, 83a (¶ 54); see also *id.* at 82a (¶ 52). In April, 1991, the Police Jury adopted a redistricting plan that, like all of its predecessors, contains no majority-black districts. *Id.* at 3a, 68a (¶ 11).

On May 28, 1991, the Police Jury submitted its redistricting plan to the Attorney General seeking preclearance under Section 5. The Police Jury did not provide the Attorney General with information then available to it showing that reasonably compact majority-black districts could be created. J.S. App. 68a-69a (¶ 11), 76a (¶ 36), 82a-83a (¶ 53). Nor did it provide a copy of a letter from the Concerned Citizens of Bossier Parish, a local organization, protesting the Police Jury's exclusion of black citizens from the redistricting process, *id.* at 69a (¶ 11), despite the organization's express request that the letter be included in the Police Jury's Section 5 submission, *id.* at 87a (¶¶ 65, 66). On July 29, based on what turned out to be inaccurate and incomplete information, the Attorney General precleared the Police Jury redistricting plan. *Id.* at 3a, 68a-69a (¶ 11).

c. The School Board began its own redistricting process in early 1991. J.S. App. 4a. With its next election not scheduled to occur until October, 1994, the Board proceeded without urgency. *Id.* at 4a, 93a (¶ 83). The Board initially chose not to use the districts in the 1991 Police Jury plan, but to develop a different plan. *Id.* at 4a, 28a, 47a, 94a (¶ 87). Although the Board and the Police Jury have jurisdiction over the same geographic area and both use 12 single-member districts, the bodies serve different functions and for at least a decade have maintained different electoral districts. *Id.* at 3a-4a & n.3, 72a-73a (¶¶ 24, 26); U.S. Exh. 94, at 14. School boards and police juries have different redistricting inter-

ests that generally warrant different plans: "For example, police juries are concerned with road maintenance, drainage, and in some cases garbage collection, and the level of demand for such services in each district is a concern. School board members, by contrast, are typically concerned with having a public school or schools in each district." J.S. App. 73a (¶ 24); U.S. Exh. 94, at 14-15. Police Jury district lines do not correspond with school attendance zones, and schools are unevenly distributed in the Police Jury districts, with some districts containing no schools and others containing several. J.S. App. 8a, 112a (¶ 141). If used by the Board, the 1991 Police Jury plan would, in addition, pit two sets of Board incumbents against one another and create other districts with no Board incumbents. *Id.* at 8a, 102a (¶ 109).

The Board hired Gary Joiner, the Police Jury's cartographer, to develop a redistricting plan for the Board, estimating that he would spend 200 to 250 hours on the project. J.S. App. 92a (¶ 80), 94a (¶ 86). The cartographer met privately with Board members and showed them various computer-generated alternative districts. *Id.* at 97a (¶ 96).

Beginning in March, 1992, representatives of local black community groups (including defendant-intervenor George Price, president of the local chapter of the NAACP) requested that representatives of the black community be included in the Board's redistricting process. The Board did not respond to those requests. J.S. App. 5a, 96a-98a (¶¶ 93-94, 97). In August, 1992, with no other plan publicly on the table, Price presented a plan for two majority-black districts that had been developed by the NAACP. *Id.* at 6a, 96a-97a (¶ 95), 98a (¶¶ 98-99). Price was told that the Board would not consider a plan that did not also draw the other ten districts. *Id.* at 6a, 98a (¶ 99).

At the September 3, 1992, Board meeting, Price presented an NAACP plan depicting all 12 districts, but the Board refused to consider it, ostensibly because "the

plan's district lines crossed existing precinct lines, and therefore violated state law." J.S. App. 99a (¶ 102); *id.* at 6a.[6] The Board's cartographer and attorney knew at the time, however, that the crossing of existing precinct lines did not legally preclude the Board from considering the plan. *Id.* at 99a-100a (¶ 102). Although state law prohibits school boards from splitting precincts, *id.* at 71a-72a (¶ 21), school boards were always "free to request precinct changes from the Police Jury necessary to accomplish their redistricting plans [*sic*: goals]," *id.* at 7a (quoting *id.* at 72a (¶ 23)). That practice is "quite common" statewide. *Id.* at 72a (¶ 22); J.A. 168 (Joiner testimony); see J.A. 136-138 (Creed testimony); J.A. 140-141 (Creed supplemental testimony).[7] The Bossier Parish School Board itself apparently had anticipated the necessity of splitting precincts in its redistricting plan. See J.S. App. 29a, 56a-57a, 95a (¶ 89). Joiner had given the Board precinct maps at the start of the redistricting process, telling them that they "would have to work with the Police Jury to alter the precinct lines," *id.* at 95a (¶ 89).

At no time during the redistricting process did the Board or its cartographer ever assert that there was any value in avoiding precinct splits or in minimizing their number. Nor, during the redistricting process, did Board members or their cartographer ever discuss the alleged costs of creating precinct splits. See generally U.S. Exhs. 26-28, 32, 34 (Board minutes); J.A. 87-88 (Blunt testimony). The Board never requested that the Police Jury consider realigning the precincts. J.S. App. 7a. The

---

[6] Louisiana election precincts are administrative units established for the purpose of conducting elections, including siting polling booths and allocating election officials. See Defendant-Intervenors' Exh. G at 15.

[7] For example, of the nine redistricting plans the Board's cartographer had drawn for Louisiana parishes, five involved school boards that sought and received precinct changes from their police juries in this manner. Tr. vol. I (Apr. 10, 1995), at 157-158 (Joiner testimony).

Board also never asked its cartographer to explore the possibility of modifying the NAACP proposal to reduce the number of precinct splits, or of otherwise developing a plan that would alleviate black vote dilution. *Id.* at 101a (¶ 106).

Instead, at the Board's next scheduled meeting, two weeks after Price presented the NAACP plan and two years before the next Board election, the Board unanimously passed a motion of intent to adopt the Police Jury plan that it had initially found unsatisfactory. J.S. App. 100a (¶ 106). The Board's action to adopt the Police Jury plan precipitated overflow citizen attendance at a Board meeting on September 24, 1992. *Id.* at 7a-8a, 101a (¶ 108). Fifteen residents voiced their opposition to adoption of the Police Jury plan, principally on the ground that it would dilute black voting strength. *Ibid.* No one spoke in favor of the Police Jury plan. *Id.* at 8a. The NAACP presented a petition containing over 500 signatures—the largest number of signatures on a petition opposing a Board action that had been submitted on any subject in years. *Id.* at 101a (¶ 108). The petition asked the Board to consider alternatives to the Police Jury plan that would be less dilutive of minority voting strength. *Id.* at 7a-8a.

George Price, on behalf of several community organizations representing interests of black residents, urged the Board to consider the NAACP plan or to use it as a foundation for creating a different non-dilutive plan. J.S. App. 6a-8a; 101a (¶ 108). Price also explained to the Board that, in light of the NAACP plan, which demonstrated the feasibility of drawing one or more reasonably compact majority-black districts, the Attorney General's preclearance of the Police Jury plan did not guarantee preclearance of the same plan for School Board elections. J.A. 122, 132. The Board did not respond to the opponents of the Police Jury plan, and adopted that plan at its next meeting. J.S. App. 8a, 102a (¶ 109).

Several board members explained, in private conversations, why the Board had refused to consider any less dilutive redistricting plan. Board member Henry Burns stated that although he personally favors "having black representation on the board, other school board members oppose that idea." J.A. 93 (Davis testimony); J.S. App. 31a, 53a-54a. Board member Barry Musgrove said that "the Board was 'hostile' toward the idea of a black majority district." J.A. 123 (Price testimony); J.S. App. 53a. Board member Thomas Myrick explained to Price his own opposition to a less dilutive redistricting plan. Myrick represented a district that included portions of predominantly black communities, which, if not divided, could comprise part of a black-majority district north of Bossier City. J.S. App. 81a (¶ 48), 93a-94a (¶ 85); see also J.A. 102-103 (Castille declaration); J.S. App. 110a-111a (¶¶ 133-138).[8] Myrick told Price that "he had worked too hard to get [his] seat and that he would not stand by and 'let [them] take his seat away from him.'" J.A. 124 (Price testimony); see J.A. 135 (Harry testimony); J.S. App. 53a. Myrick also told Joiner, the Board's own cartographer, that he wanted to avoid creating a black-majority district. J.A. 163-164 (Joiner testimony).

The Board submitted the Police Jury plan to the Attorney General for preclearance. On August 30, 1993, the Attorney General objected to the plan under Section 5 of the Voting Rights Act, citing information available to

---

[8] Myrick, accompanied by at least two Police Jurors who represented districts that similarly divided black communities, had met frequently with the Police Jury's cartographer, Gary Joiner, during the Police Jury redistricting process. J.S. App. 81a (¶ 48), 93a-94a (¶ 85). Although Myrick flatly denied at trial having met with Joiner, J.A. 151, 156-157, Joiner testified that Myrick had come to his office several times—as many as six to ten—to discuss the Police Jury redistricting, and to indicate his opposition to drawing a black majority district, J.A. 159-164. It was Myrick who first proposed to the Board that it adopt the Police Jury plan as its own. J.A. 151-152 (Myrick testimony).

the Board, showing the clear discriminatory effect of the plan on minority voting strength, that had not been provided when the Police Jury submitted the same plan in 1991. J.S. App. 8a, 106a (¶ 119), 154a-158a. On December 20, 1993, the Attorney General denied the Board's request for reconsideration and withdrawal of the objection. *Id.* at 159a-162a.

3. On July 8, 1994, the Board filed a declaratory judgment action seeking Section 5 preclearance from a three-judge district court for the District of Columbia. One judge of the panel presided over a two-day trial that was held on April 10 and 11, 1995. The record, consisting primarily of stipulated facts, written direct testimony prepared before trial, and the transcript of live cross and redirect examinations, was provided to the other judges and closing argument was conducted before the entire panel. J.S. App. 9a. On November 2, 1995, the district court granted preclearance. *Id.* at 36a.

The district court first held that Section 5 preclearance cannot be denied based upon a violation of Section 2. J.S. App. 11a-12a. The court reasoned that Section 2 "uses plainly different language and serves a different function from that of section 5." *Id.* at 15a. The court held that the discriminatory effects addressed by Section 5 are limited to retrogressive effects, whereas Section 2's "results" standard "can be violated * * * irrespective of whether the disputed voting practice is better or worse than whatever it is meant to replace." *Ibid.* The court did not address the United States' alternative argument that a Section 2 violation, even if not a form of prohibited "effect" under Section 5, nevertheless constitutes an equitable defense against Section 5 preclearance, on which the United States bears the burden of proof. See U.S. Post-Trial Br. 32 n.27.

The district court concluded that the legislative history of the Act did not support denial of preclearance based on a Section 2 violation. In its view, resort to the legislative history was inappropriate because the language of the statute is "unambiguous." J.S. App. 17a. The court also refused to accord any deference to the Department of Justice regulation requiring the Attorney General to withhold preclearance of voting changes that clearly violate Section 2, 28 C.F.R. 51.55(b)(2), on the ground that a federal court has authority co-equal with that of the Attorney General to interpret Section 5 in the first instance. J.S. App. 18a-19a. In light of its legal ruling, the court declined to decide whether the evidence established that the redistricting plan was dilutive in violation of Section 2. *Id.* at 9a n.6.

The district court then held that the Board had met its burden of showing that, in adopting the Police Jury plan, it did not act with a racially discriminatory purpose. J.S. App. 27a-29a. In deciding that question, the court held that "evidence of a section 2 violation" may not be considered as "evidence of discriminatory purpose under section 5." *Id.* at 23a; see also *id.* at 24a, 9a n.6. The court thus refused to consider, as relevant to the Board's purpose, evidence of the Board's contemporaneous awareness that the Police Jury plan was dilutive and therefore had the discriminatory effect of precluding any meaningful opportunity for black citizens to elect representatives of their choice. *Id.* at 9a n.6. The district court also refused to consider evidence that the Board had a long history of racial discrimination, including continuing noncompliance with a court order in the three-decade-old *Lemon* school desegregation case in which it is a defendant. *Id.* at 34a n.18.

The district court acknowledged that the Board had "offered several reasons for its adoption of the Police Jury plan that clearly were not real reasons." J.S. App. 27a & n.15. It nonetheless found "legitimate, nondiscriminatory motives" for the Board's adoption of the Police Jury plan: "The Police Jury plan offered the twin attractions of guaranteed preclearance and easy implementation (be-

cause no precinct lines would need redrawing)." *Id.* at 27a-28a.

Judge Kessler concurred in part and dissented in part. J.S. App. 37a-65a. She agreed with the majority that a Section 2 violation does not prevent Section 5 preclearance, J.S. App. 37a, but dissented from the majority's conclusion that the Board acted with legitimate, nondiscriminatory motives, *id.* at 38a-65a. Taking into account evidence that this Court held in *Village of Arlington Heights* v. *Metropolitan Housing Dev. Corp.*, 429 U.S. 252, 266 (1977), is relevant in assessing discriminatory purpose, Judge Kessler would have found that "the evidence demonstrates conclusively that the Bossier School Board acted with discriminatory purpose." J.S. App. 39a.

SUMMARY OF ARGUMENT

1. This Court consistently has held that the discriminatory effect of a voting change on racial minorities, and the history of discrimination by the jurisdiction that adopted the change, are highly relevant in the assessment of whether the jurisdiction acted with a discriminatory purpose. By prohibiting consideration of such probative evidence under Section 5 of the Voting Rights Act of 1965, 42 U.S.C. 1973c, the district court squarely contravened this Court's established approach to determining discriminatory purpose in both voting and non-voting contexts. Because the application of an erroneously restrictive legal standard necessarily affected its decision, the district court's judgment cannot stand.

When all the relevant evidence is considered, the record permits only one conclusion: that the Board adopted its redistricting plan with a racially discriminatory purpose. In addition to the clearly dilutive impact of the plan—which "effectively excludes minority voters from the political process," J.S. App. 41a—and the Board's history of discrimination, several other indicia make the Board's discriminatory purpose clear. After a long, deliberate search

for a redistricting plan different from that of the Police Jury, the Board suddenly rushed to adopt the Police Jury plan as soon as it became clear that the local African-American community would oppose any efforts to obtain preclearance of a dilutive plan. As a result, the School Board entirely disserved two of its primary traditional districting concerns: incumbency protection and distribution of schools and attendance areas among districts. The decision to adopt the Police Jury plan at the time it was adopted makes sense only if the Board was intent on drawing a plan without *any* majority-black districts and chose the Police Jury plan because it was the only such plan that the Board thought likely to be precleared.

In this context, "guaranteed preclearance" was not, as the district court believed (J.S. App. 28a), a nondiscriminatory motivation; rather, it was a means of effectuating the Board's purposeful discrimination. Although the Board has asserted other allegedly legitimate justifications, those reasons constituted nothing more than post hoc rationalizations. Indeed, the district court found that many of the Board's asserted motivations "clearly were not real reasons" for its actions. *Id.* at 27a n.15. The district court's finding of no discriminatory purpose is clearly erroneous and must therefore be reversed.

2. The district court also erred in holding that voting changes that dilute minority voting strength in violation of Section 2 of the Act are entitled to preclearance under Section 5. Since *Beer* v. *United States*, 425 U.S. 130 (1976), this Court has recognized that an unlawfully dilutive voting change is not entitled to preclearance. When it amended Section 2 and extended Section 5 in 1982, Congress was aware of and endorsed that rule; it therefore expressed its intent that preclearance should be withheld from changes that violate amended Section 2's prohibition on vote dilution. The same principle is embodied in a regulation promulgated by the Attorney General in 1987 and drafted with close legislative oversight. 28 C.F.R.

51.55(b)(2). The district court's ruling that changes which are known to be illegal under Section 2 must nevertheless be precleared creates an anomaly that is plainly contrary to Congress's intent.

ARGUMENT

I. THE DISTRICT COURT ERRED IN CONCLUDING THAT THE BOSSIER PARISH SCHOOL BOARD ADOPTED THE POLICE JURY REDISTRICTING PLAN WITHOUT ANY DISCRIMINATORY PURPOSE

A. The District Court Committed Legal Error by Categorically Refusing to Consider the Dilutive Effect of the Board's Decision and the Board's History of Discrimination

1. Under Section 5, a voting change adopted with a discriminatory purpose may not be precleared. See 42 U.S.C. 1973c; *City of Richmond* v. *United States*, 422 U.S. 358, 378-379 (1975). "[D]etermining the existence of a discriminatory purpose 'demands a sensitive inquiry into such circumstantial and direct evidence of intent as may be available.' " *Rogers* v. *Lodge*, 458 U.S. 613, 618 (1982) (quoting *Village of Arlington Heights* v. *Metropolitan Housing Dev. Corp.*, 429 U.S. 252, 266 (1977)). In *Arlington Heights*, this Court set forth a nonexhaustive list of factors relevant to that inquiry. "The impact of the official action—whether it 'bears more heavily on one race than another'—may provide an important starting point." *Arlington Heights*, 429 U.S. at 266 (citation omitted) (quoting *Washington* v. *Davis*, 426 U.S. 229, 242 (1976)). Other relevant factors include the "historical background of the decision"—"particularly if it reveals a series of official actions taken for invidious purposes," 429 U.S. at 267; the "specific sequence of events leading up to the challenged decision," including any procedural or substantive departures from normal practices, *ibid.*; and the "legislative or administrative history"—"especially

where there are contemporary statements by members of the decisionmaking body, minutes of its meetings, or reports," *id.* at 268.

This Court has applied the *Arlington Heights* standards in adjudicating claims of unconstitutional, purposeful vote dilution. See *Rogers*, 458 U.S. at 618-622; *City of Mobile* v. *Bolden*, 446 U.S. 55, 70 (1980) (plurality opinion). The Court has also repeatedly affirmed judgments of three-judge district courts that have applied those standards to Section 5's discriminatory purpose analysis. See *City of Pleasant Grove* v. *United States*, 568 F. Supp. 1455, 1458 (D.D.C. 1985), aff'd, 479 U.S. 462 (1987); *Busbee* v. *Smith*, 549 F. Supp. 494, 516-517 (D.D.C. 1982), aff'd, 459 U.S. 1166 (1983); *City of Port Arthur* v. *United States*, 517 F. Supp. 987, 1019 (D.D.C. 1981), aff'd, 459 U.S. 159 (1982).

The district court did not follow the established *Arlington Heights* approach. Instead, it incorrectly limited the facts it considered probative of discriminatory purpose in a Section 5 proceeding. The court specifically refused to consider either the discriminatory effect of the challenged redistricting plan on minority voters or Bossier Parish's history of racial discrimination. Characterizing that evidence as "section 2 evidence," the district court asserted that it had no bearing on the assessment of purpose in a Section 5 proceeding.[9] The court thus ignored important facts that were highly probative of the Board's purpose in

---

[9] J.S. App. 23a ("*Miller*[v. *Johnson*, 115 S. Ct. 2475 (1995)] forecloses the permitting of section 2 evidence in a section 5 case."); *id.* at 24a ("[W]e will not permit section 2 evidence to prove discriminatory purpose under section 5."); *id.* at 34a n.18 (suggesting that the historical failure of the School Board to comply with the terms of the desegregation order entered against it was irrelevant to the inquiry into its purpose in adopting a redistricting plan with no majority-black districts); see also *id.* at 9a n.6 ("Because we hold * * * that section 2 of the Voting Rights Act * * * has no place in this section 5 action, much of the evidence relevant only to the section 2 inquiry is not discussed in this opinion.").

adopting the redistricting plan for which it sought preclearance.

a. The district court erred in refusing to consider evidence of the dilutive effect of the Board's redistricting plan on minority voting strength. "Necessarily, an invidious discriminatory purpose may often be inferred from the totality of the relevant facts, including the fact, if it is true, that the [challenged decision] bears more heavily on one race than another." *Washington* v. *Davis*, 426 U.S. at 242. In the voting rights context, evidence of the discriminatory impact of a decision is often "an important starting point" for an inquiry into purpose. *Bolden*, 446 U.S. at 70; see *Rogers*, 458 U.S. at 623-624. So, too, in discrimination cases arising in other contexts, this Court has held that the impact of a challenged practice is an important element in the assessment of purpose. See, *e.g.*, *Pullman-Standard* v. *Swint*, 456 U.S. 273, 289 & n.18 (1982) (Title VII); *Columbus Bd. of Educ.* v. *Penick*, 443 U.S. 449, 464 (1979) (education); *Personnel Administrator* v. *Feeney*, 442 U.S. 256, 274-275 (1979) (employment); *Arlington Heights*, 429 U.S. at 266 (zoning). "Impact" evidence is probative because, when the adverse consequences of a challenged action upon an identifiable group are inevitable or foreseeable, "a strong inference that the adverse effects were desired can reasonably be drawn." *Feeney*, 442 U.S. at 279 n.25.

The School Board was well aware of the dilutive effect of the Police Jury plan upon minority voting strength, and the Board's adoption of that plan with knowledge of that effect is strongly probative of the Board's discriminatory purpose. As Judge Kessler noted below, the Police Jury plan "effectively excludes minority voters from the political process." J.S. App. 41a. Ample evidence established that the Board was aware of that dilutive impact. "There was * * * overwhelming evidence of bloc voting along racial lines" and, "although there had been black candidates, no black had ever been elected" to the Bossier

Parish School Board. *Rogers*, 458 U.S. at 623; J.S. App. 40a, 115a-127a (¶¶ 153-196).[10] The Board admitted that it was "obvious that a reasonably compact black-majority district could be drawn within Bossier City," *id.* at 76a (¶ 36), and that the NAACP plan Price presented to the Board demonstrated that a second, reasonably compact majority-black district could be drawn using natural and artificial boundaries traditionally used in redistricting. *Id.* at 113a-115a (¶¶ 143-150). Price and many other citizens told the Board that the proposed redistricting plan would unnecessarily diminish black voting strength. *Id.* at 101a-102a (¶ 108).

"[R]ather than consider either of the alternative proposals [that included compact majority-black districts] brought before it or direct their own cartographer to draft one," however, "the School Board adopted a plan 'which guaranteed that blacks would remain underrepresented on the [Board] by comparison to their numerical strength.'" J.S. App. 41a (quoting *City of Port Arthur*, 517 F. Supp. at 1022). Such "actions having foreseeable and anticipated disparate impact are relevant evidence to prove the ultimate fact, forbidden purpose." *Penick*, 443 U.S. at 464. The district court erred in refusing to consider, as relevant to the Board's purpose, this substantial, largely stipulated evidence demonstrating minority vote dilution. See *Rogers*, 458 U.S. at 623-627.

---

[10] Board members knew that no black candidate had ever been elected to the Board, J.A. 125, 126 (letters from Price to School Board); U.S. Exh. 98, at 28-30 (Board member Hensley testimony regarding Board receipt of Price letter), and the presence of racial bloc voting in Bossier Parish was generally recognized among the community and elected officials, see, *e.g.*, U.S. Exh. 102, at 8-9 (Board member Blunt testimony); J.S. App. 122a (¶ 181) (Police Juror Burford's understanding that there was substantial racial bloc voting); U.S. Exh. 31 (recognition in local press); U.S. Exh. 104, at 4, 8 (former Bossier City Councilman Jeff Darby testimony); U.S. Exh. 105, at 11-13 (police juror Jerome Darby testimony).

b. The district court also failed to take into account other relevant evidence of purpose solely because it would also be relevant in a Section 2 proceeding. This Court has held that "[e]vidence of historical discrimination is relevant to drawing an inference of purposeful discrimination." *Rogers*, 458 U.S. at 625; accord *Arlington Heights*, 429 U.S. at 267. The district court, however, refused to consider the Board's substantial and continuing legacy of discrimination against blacks in its administration of the Bossier Parish school system. J.S. App. 9a n.6, 34a n.18, 42a n.4; compare *id.* at 34a n.18 with *id.* at 42a-46a, 136a-138a (¶¶ 236-243).

The Bossier Parish School Board has presided over increasingly segregated schools in spite of its affirmative, continuing duty to eliminate racial segregation; that fact buttresses our contention that the same Board acted with a discriminatory purpose when it adopted a redistricting plan that adversely dilutes black voting strength. *Rogers*, 458 U.S. at 624-625 (referring to lingering school segregation as relevant to proof of purposeful discrimination). Indeed, the Board recently violated a court desegregation order by disbanding a biracial committee; it did so because "the tone of the committee made up of the minority members * * * quickly turned toward becoming involved in policy." J.S. App. 105a (¶ 116).[11] That action is probative of the Board's unresponsiveness to reasonable concerns of the black community—another "important element * * * of [the] number of circumstances a court should consider in determining whether discriminatory purpose may be inferred." *Rogers*, 458 U.S. at 625 & n.9. The district court erred as a matter of law by refusing to take into account that highly probative evidence of the Board's continuing racial discrimination.

[11] As Judge Kessler noted, "[w]hat exactly the Committee was supposed to become involved in, if not policy, is unclear." J.S. App. 46a.

2. The district court gave three reasons for categorically excluding from consideration any evidence that would be relevant in a Section 2 case. None is persuasive.

First, the court suggested that allowing such evidence in the discriminatory purpose inquiry would impermissibly allow a denial of preclearance to be based solely on a Section 2 violation. J.S. App. 23a.[12] We contend, not that evidence of a Section 2 violation necessarily *suffices* to prove discriminatory purpose; see *Rogers*, 458 U.S. at 618; *Bolden*, 446 U.S. at 70, but that it is *relevant* to the purpose inquiry, see *Rogers*, 458 U.S. at 623-624; *Arlington Heights*, 429 U.S. at 265; see also *Arizona* v. *Reno*, 887 F. Supp. 318, 323-324 (D.D.C. 1995) (evidence relevant to Section 2 violation also relevant to Section 5 purpose inquiry), appeal dismissed, 116 S. Ct. 1037 (1996).[13] The district court erred as a matter of law in ignoring that probative evidence.

Second, the district court suggested that this Court's decision in *Miller* v. *Johnson*, 115 S. Ct. 2475 (1995), foreclosed any argument that the Board's adoption of a plan that it knew diluted minority voting strength evidenced its discriminatory purpose. J.S. App. 34a-36a. That is incorrect. In *Miller*, 115 S. Ct. at 2492-2493, the Court considered an ameliorative redistricting plan and

[12] As we explain below, a violation of Section 2 provides an independent basis for denying preclearance. See Point II, *infra*.

[13] The district court erred in relying on *New York* v. *United States*, 874 F. Supp. 394, 398-400 (D.D.C. 1994), in support of its holding that evidence of a discriminatory effect that violates Section 2 "has no place" in a Section 5 case. J.S. App. 9a n.6, 22a-23a. The three-judge court in *New York* merely held that discriminatory purpose may not "*always* be inferred" from adoption of a system that has a discriminatory effect or, in the case of a redistricting plan, a dilutive impact, 874 F. Supp. at 399 (emphasis added); it did not hold, as did the district court below, that evidence of a discriminatory effect is *irrelevant* to the Section 5 purpose inquiry. See *ibid.* (citing *Arlington Heights*, 429 U.S. at 266).

held that purposeful refusal to subordinate traditional districting principles in order to "maximiz[e]" the number of majority-black districts fails to demonstrate purposeful discrimination. See also *Shaw* v. *Hunt*, No. 94-923 (June 13, 1996), slip op. 11-14 (*Shaw II*). Here, by contrast, the Board sought consciously to *minimize* the number of majority-black districts. Despite concentrations of black population, the Board adopted a plan that lacks any majority-black district, and that has had the clearly foreseeable effect of diluting minority voting strength, and the Board did so in circumstances strongly suggesting a discriminatory motivation. Such "conscious *minimizing* of black voting strength" is clearly relevant to a finding of discriminatory purpose. *Busbee*, 549 F. Supp. at 517 (emphasis added); see *id.* at 518.[14] Neither *Miller* nor *Shaw II* disturbed the well-settled rule that *Arlington Heights* provides the appropriate standard for determining discriminatory purpose under Section 5. Rather, the Court disagreed in those cases with the Attorney General's application of that standard to the particular plans submitted for preclearance. The Court's holdings cast no doubt on the continued application of traditional discriminatory purpose analysis in Section 5 cases.

---

[14] The Court in *Miller* did not refuse to consider evidence of the effect of the challenged districting plan. In evaluating whether the plan there was adopted with a discriminatory purpose, the Court considered the plan's ameliorative impact. 115 S. Ct. at 2492. *Miller* is therefore fully consistent with the substantial precedent mandating consideration of the effect of a decision as one element in the totality of circumstances that indicates whether the decision was purposefully discriminatory. Indeed, throughout its *Miller* opinion, the Court cited *Arlington Heights* with approval. *Miller*, 115 S. Ct. at 2483, 2487, 2489. And while this Court recently expressed doubt that "a showing of discriminatory effect under § 2, *alone*, could support a claim of discriminatory purpose under § 5," it did not question the well-established proposition that disparate effects are *relevant* to discriminatory purpose. *Shaw* v. *Hunt*, slip op. at 14 n.6 (emphasis added).

Finally, the district court suggested that a purpose to cause retrogression in the electoral position of minority voters is the *only* type of discriminatory purpose cognizable under Section 5. J.S. App. 23a-24a (quoting *Texas* v. *United States*, Civ. Act. No. 94-1529 (D.D.C. July 10, 1995), slip op. 2-3. Under that approach, a jurisdiction that had never had a majority-minority district could never be found to have a discriminatory purpose in refusing to create such a district. This Court has expressly rejected that proposition. In *City of Richmond*, the Court concluded that the voting change under review there did not have an unlawfully retrogressive effect under Section 5, but it then remanded to the three-judge court for a determination whether the change had been adopted with a discriminatory purpose. Explicitly addressing the question "how it could be forbidden by § 5 to have the purpose and intent of achieving only what is a perfectly legal result under that section," the Court found it "plain" that a voting change made "for the purpose of discriminating against Negroes * * * has no legitimacy at all under our Constitution or under the statute" and "is forbidden by § 5, *whatever its actual effect may have been*." *City of Richmond*, 422 U.S. at 378-379 (emphasis added). The Court reaffirmed that proposition in *City of Pleasant Grove* v. *United States*, 479 U.S. 462 (1987), explaining that a covered jurisdiction may not "short-circuit a purpose inquiry under § 5 by arguing that the intended result was not impermissible," because not retrogressive, "under an objective effects inquiry." *Id.* at 471 n.11. See also *City of Port Arthur* v. *United States*, 459 U.S. 159, 168 (1982) (noting that an electoral scheme adopted for a racially discriminatory purpose would be invalid even if it fairly reflected the political strength of a minority community).

Because of its failure to apply the correct legal standard to the Section 5 purpose inquiry, the district court's decision must be reversed. In this case, as in *Pullman-*

Standard v. *Swint*, the district court "failed to consider relevant evidence" and certainly "might have come to a different conclusion had it considered that evidence." 456 U.S. at 292. At a minimum, the district court's errors require a remand to permit that court to reevaluate the question of purpose in light of all of the relevant evidence.

B. Other Record Evidence, Together With the Evidence the District Court Erroneously Failed to Consider, Demonstrates That the Board Acted With a Discriminatory Purpose in Adopting the Police Jury Plan

The district court not only failed to consider relevant evidence, but also evaluated improperly the limited evidence it did consider. When all the relevant evidence is correctly considered, it supports only one conclusion: the Board acted with a racially discriminatory purpose in adopting the Police Jury plan.

1. Both the "specific sequence of events leading up" to the Board's decision to adopt the Police Jury plan and the substantive consequences of that decision demonstrate that the Board acted with a discriminatory purpose. See *Arlington Heights*, 429 U.S. at 267. The Board initially proceeded without urgency in its redistricting efforts, acting separately from the Police Jury. J.S. App. 4a, 92a (¶ 80). The Board did not even begin its redistricting process until after the Police Jury had completed its own process. At that point the Board hired the Police Jury's redistricting consultant, Gary Joiner, who estimated that it would take 200 to 250 hours to produce a plan for the School Board—far more time than would be necessary simply to adopt the Police Jury plan. *Id.* at 5a, 29a. Those initial decisions were consistent with the Board's needs, for the next Board election would not occur until more than three years after the Police Jury adopted its redistricting plan. *Id.* at 4a. The Board proceeded without haste from May, 1991, until the autumn of 1992.

It also best served the Board's interests to develop a redistricting plan separate from the Police Jury's. Although the two bodies both cover the same geographic area, and both consist of 12 members elected from single-member districts, the Board and the Police Jury had maintained different districts throughout the 1980s. They had done so because "[s]chool boards and police juries have different needs and different reasons for redistricting" in general. J.S. App. 72a (¶ 24). Moreover, the School Board and the Police Jury had divergent incumbency protection concerns (*id.* at 73a (¶ 26), 92a (¶ 81)), and the fact that the Board and the Police Jury had maintained separate districting plans in the previous decade resulted in a continuing divergence in incumbency interests during the post-1990 round of redistricting. *Id.* at 93a (¶ 84).

But the Board sharply changed course in September, 1992, after the local NAACP made clear that it would actively urge the adoption of a districting plan that did not dilute black voting strength. During the summer of 1992, the NAACP repeatedly requested that it be included in the redistricting process. J.S. App. 96a-101a (¶¶ 93, 94, 95, 97, 100, 106, 108); J.A. 125-129. However, when Joiner, the Board's cartographer, demonstrated alternative redistricting scenarios to the Board members, in the late summer of 1992, the NAACP was not informed. J.S. App. 97a (¶¶ 96, 97). At the September 3, 1992, meeting of the Board, NAACP President George Price presented the NAACP's 12-district plan, containing two districts with black voting-age majorities. *Id.* at 98a-99a (¶¶ 98-100). Two weeks later, without directing Joiner to conduct any further study of Price's plan, the Board unanimously passed a motion of intent to adopt the Police Jury plan, which contained no majority-black districts. *Id.* at 100a-101a (¶ 106). Despite unanimously negative public comment at an intervening hearing, the Board adopted the Police Jury plan on October 1 without

a single dissenting vote. *Id.* at 8a, 101a-102a (¶¶ 108-109).

As Judge Kessler concluded, "[t]he common-sense understanding of these events leads to one conclusion: The Board adopted the Police Jury plan—two years before the next election—in direct response to the presentation of a plan that created majority-black districts. Faced with growing frustration of the black community at being excluded from the electoral process, the only way for the School Board to ensure that no majority-black districts would be created was to quickly adopt the Police Jury plan and put the issue to rest." J.S. App. 49a-50a. That conclusion is bolstered by the Board's exclusion of minorities from any meaningful part in the redistricting process, see *Busbee*, 549 F. Supp. at 518, as well as the anomalous substantive consequences of importing the Police Jury's redistricting plan for use in School Board elections. Although the Board had long considered incumbency protection to be an important redistricting interest, the plan the Board adopted pitted incumbents against each other in two districts. J.S. App. 102a (¶ 109).[15] And while school board members "are typically concerned with having a public school or schools in each [School

[15] One incumbent Board member who did not stand to lose from the adoption of the Police Jury plan was Tom Myrick. J.S. App. 95a (¶ 91). See page 11 & n.8, *supra*. The district court found it "understandable" that Myrick held a "strong desire not to have his district so changed that his constituency [was] obliterated" (J.S. App. 32a), but it is clear that Myrick recognized that preserving his existing constituency came at the necessary expense of dividing black voters in northern Bossier Parish among several districts. For Myrick, protecting his incumbency was thus inextricably intertwined with intentionally diluting black voting strength. See *Garza* v. *County of Los Angeles*, 918 F.2d 763, 771 (9th Cir. 1990), cert. denied, 498 U.S. 1028 (1991); *id.* at 778-779 & n.1 (Kozinski, J., concurring in part and dissenting in part); *Ketchum* v. *Byrne*, 740 F.2d 1398, 1408 (7th Cir. 1984), cert. denied, 471 U.S. 1135 (1985); *Rybicki* v. *State Bd. of Elections*, 574 F. Supp. 1082, 1109 (N.D. Ill. 1982) (three-judge court).

Board] district," some districts in the Police Jury plan did not contain a single school. *Id.* at 73a (¶ 24). Where, as here, "the factors usually considered important by the decisionmaker strongly favor a decision contrary to the one reached," a powerful inference of discrimination arises. *Arlington Heights*, 429 U.S. at 267 & n.17.

2. Board members' own statements of opposition to "black representation" and "drawing majority-black districts," J.S. App. 31a-32a; *id.* at 53a-54a, also show that the Board acted with a discriminatory purpose. Two Board members reported that others on the Board were "hostile" or "opposed" to the idea of black representation on the Board, or a majority-black School Board district. J.A. 93, 123; J.S. App. 31a-32a. A third, who represented a district that included portions of a predominantly black community that, if not divided, could comprise part of a black-majority district north of Bossier City, insisted that "he had worked too hard to get [his] seat and that he would not stand by and 'let [them] take his seat away from him.'" J.A. 124, 134; J.S. App. 53a, see page 11, *supra*.

The district court erred in its interpretation of those statements. J.S. App. 31a-32a. When all relevant evidence is taken into account, the statements clearly indicate, contrary to the district court's conclusion, a purpose to prevent "the presence of black persons as members of the School Board." *Id.* at 31a. The district court reasoned that opposition to "the intentional drawing of majority-black districts in order to ensure black representation on the Board" is "hardly an indication of discriminatory purpose unless section 5 imposes an affirmative obligation to draw additional [*sic*] majority-black districts." *Ibid.* Although the refusal to draw compact majority-black districts is not always probative of discriminatory intent, in the circumstances of this case the Board's avowed refusal to do so communicated a clear message of opposition to black representation. In circumstances where following traditional districting principles would lead to the drawing of majority-black districts,

purposefully avoiding drawing them is probative of racially discriminatory purpose. See, *e.g.*, *Garza* v. *County of Los Angeles*, 918 F.2d 763, 770-771 (9th Cir. 1990), cert. denied, 498 U.S. 1028 (1991); *Busbee*, 549 F. Supp. at 517. The Police Jury plan plainly disserved the Board's interests in incumbency protection and distribution of schools among districts. In the face of unquestioned evidence of dilution, of the Board's history of discrimination, of the suspect timing of the Board's decision to adopt the Police Jury plan, and of the Board's shifting justifications, the only plausible explanation for the Board's choice of the Police Jury plan was that the Board adopted that plan in order to dilute the effectiveness of black votes. Where, as here, the Board knew that failure to draw majority-black districts would perpetuate black vote dilution, its expressed opposition to doing so is evidence of its racially discriminatory purpose.

The district court concluded that "at least a majority of the white Board members were responsive to the black community and were not opposed to black representation on the School Board." J.S. App. 30a. In support of that conclusion, it pointed to only one fact—the Board's appointment of a black member, Jerome Blunt, to a vacant School Board post. *Ibid.* But that appointment was plainly a meaningless palliative. As Judge Kessler noted, "Mr. Blunt was appointed to represent a district that was only 11% black, and his short [six-month] tenure on the job was a stark reminder of the highly polarized voting in Bossier Parish." *Id.* at 54a n.9. (Blunt lost to a white challenger. *Id.* at 100a (¶ 105)). Moreover, the circumstances of Blunt's appointment were themselves suspicious—the appointment occurred "at the very meeting where the Board adopted a motion of intent to adopt the Police Jury plan." *Id.* at 54a n.9. From the circumstances, it appears that "the School Board appointed a black to fill a seat they knew he would be unable [to] hold, hoping to quell the political furor over the adoption of the Police Jury plan." *Ibid.* This Court has noted

that the ephemeral success of black candidates in such circumstances does not warrant the drawing of favorable inferences. See *Thornburg* v. *Gingles*, 478 U.S. 30, 75-76 & n.37 (1986).

C. The District Court Erred in Finding That the Board Had Any Legitimate, Nondiscriminatory Reason for Adopting the Police Jury Plan

The district court found that the Police Jury plan "offered the twin attractions of guaranteed preclearance and easy implementation (because no precinct lines would need redrawing)," and that those were legitimate nondiscriminatory reasons for adopting that plan. J.S. App. 27a-28a. Those factors were, however, not the Board's actual reasons, nor were they nondiscriminatory. The district court's conclusion that the Board acted for nondiscriminatory reasons was infected by the court's artificially restricted view of the relevant evidence, and was, in any event, clearly erroneous.

Any interest the Board had in "guaranteed preclearance" was simply a means of effectuating the Board's purposeful dilution of minority voting strength. The Board showed no concern at all with "guaranteed preclearance" until the local NAACP made clear that it would oppose preclearance of any plan that continued to shut out minority voters. As Judge Kessler noted, "[i]f guaranteed preclearance was what the Board wanted, it would have acted soon after the Police Jury Plan was precleared by the Justice Department on July 29, 1991," rather than waiting for more than a year to adopt that plan. J.S. App. 58a.

Moreover, the fact that the Police Jury plan had previously been precleared might have recommended it over other plans comprised exclusively of white-majority districts, but fails as a rationale for the Board's selection of the Police Jury plan over any less dilutive plan. The Board could not realistically have believed that a plan

that ameliorated the existing dilution would be *less* likely to receive preclearance than the Police Jury plan. "[G]uaranteed preclearance" was a plausible motivation for adopting the Police Jury plan only if the School Board was firmly intent on continuing to use a plan with *no* majority-black districts and it wanted assurance that it could do so without drawing an objection from the Attorney General. In short, "[t]he Police Jury plan only became 'expedient' when the School Board was publicly confronted with alternative plans demonstrating that majority-black districts could be drawn, and demonstrating that political pressure from the black community was mounting to achieve such a result." J.S. App. 49a.[16]

The prospect of "easy implementation (because no precinct lines would need redrawing)," J.S. App. 28a, also was not an actual, nondiscriminatory reason for the Board's adoption of the Police Jury plan that it initially had rejected. The court suggested that "the School Board entirely reasonably *could have*, when faced with the NAACP's plan, arrived quickly at the conclusion that zero precinct splits was significantly more desirable than 46," *id.* at 29a (emphasis added), but did not find that the Board actually reached such a conclusion. The correct focus in determining the purpose behind the adoption of the disputed plan is on the Board's *actual* purpose *at the time* it adopted that plan. *City of Pleasant Grove*, 479 U.S. at 470 (rejecting argument "developed after the fact"

[16] For similar reasons, the district court's view that the Board's adoption of a dilutive plan was "an understandable, if not necessarily laudable, retreat from a protracted and highly charged public battle," J.S. App. 34a, does not support its conclusion that such a retreat amounted to a nondiscriminatory reason for adoption of the Police Jury plan. The only "public battle" the School Board faced arose from black citizens' opposition to the strongly dilutive effect of any plan with exclusively white-majority districts, and the Board "retreat[ed]" from it by deliberately excluding black voters from any meaningful participation in the process. See *id.* at 58a n.12.

because it was "not the true basis" for decision); cf. *United States* v. *Virginia*, No. 94-1941 (June 26, 1996), slip op. 18 ("[A] tenable justification must describe actual state purposes, not rationalizations for actions in fact differently grounded."); *id.* at 2-3 (opinion of Rehnquist, C.J., concurring).

The evidence shows that splitting precincts was simply never a concern for the Board during its redistricting process, but was only an excuse manufactured to justify its refusal to draw a non-dilutive plan. The Board had anticipated splitting precincts from the very beginning of the process. J.S. App. 29a, 95a (¶ 89). There is no finding that the Board ever considered the relative number of precinct splits, or their potential cost, as factors in selecting a plan. The Board did not ever "voice its concern about *too many* precinct splits causing higher election costs in its initial submission" for preclearance, nor did it "estimate[] the cost of splitting precincts before it voted to adopt the Police Jury plan." *Id.* at 57a. And the Board never considered measures that would have reduced the number of precinct splits in the NAACP plan. *Id.* at 100a-101a (¶ 106). Although the Board's cartographer and attorney asserted that the NAACP plan could not be considered because its "district lines crossed existing precinct lines, and therefore violated state law," *id.* at 99a (¶ 102), 6a, both those Board representatives knew at the time that they were free to request that the Police Jury realign the parish's precincts—a process that is both legal and common in Louisiana. *Id.* at 6a-7a, 99a-100a (¶ 102); see page 9, *supra*. They never approached the Police Jury to explore whether it was willing to take that step. *Ibid.*

The Board's proffered justifications of "guaranteed preclearance and easy implementation" were further rendered implausible by the fact that the Board raised them in conjunction with a number of other justifications that lacked credibility. As the district court acknowledged, "[i]n the

course of litigation, the School Board has offered several reasons for its adoption of the Police Jury plan that clearly were not real reasons." J.S. App. 27a n.15. The Board asserted, for example, that it had adopted the Police Jury plan to comply with this Court's decision in *Shaw* v. *Reno*, 509 U.S. 630 (1993)—a decision that was not rendered until almost nine months after the Board adopted the plan. J.S. App. 27a n.15. Other clearly pretextual reasons proffered by the Board included its stated desire to avoid voter confusion by adopting the same boundaries for the Police Jury and School Board districts. Pltff's Exh. 16 (Myrick testimony), at 4. The voter-confusion rationale was raised for the first time *post hoc*, in the Board's Section 5 submission, see J.S. App. 156a, and was not a genuine Board interest, given that (a) Louisiana jurisdictions commonly have different School Board and Police Jury districts; (b) the Board had had districts different from those of the Police Jury for more than a decade; and (c) the Board had not seriously considered adopting the same districts as the Police Jury until it was faced with the black community's request that it adopt a non-dilutive plan, see *id.* at 49a-50a, 72a (¶ 22). The fact that the Board has proffered shifting, insupportable justifications for its decision further supports a finding that it discriminated.[17]

Where "the record permits only one resolution of the factual issue" of intentional discrimination, reversal is appropriate. *Swint*, 456 U.S. at 292. As we have demonstrated, Judge Kessler was correct that, when all the relevant evidence is considered, the record "demonstrates

[17] See, *e.g.*, *Southwest Merchandising Corp.* v. *NLRB*, 53 F.3d 1334, 1344 (D.C. Cir. 1995); *EEOC* v. *Ethan Allen, Inc.*, 44 F.3d 116, 120 (2d Cir. 1994) (citing cases); see also *St. Mary's Honor Center* v. *Hicks*, 509 U.S. 502, 511 (1993) ("The factfinder's disbelief of the reasons put forward by the defendant (particularly if * * * accompanied by a suspicion of mendacity) may, together with the elements of the prima facie case, suffice to show intentional discrimination.").

conclusively that the Bossier School Board acted with discriminatory purpose." J.S. App. 39a. The judgment of the district court should be reversed and the case remanded for entry of a declaratory judgment that the appellee failed to meet its burden to show lack of discriminatory purpose under Section 5.

II. A PLAN THAT DILUTES MINORITY VOTING STRENGTH IN VIOLATION OF SECTION 2 OF THE VOTING RIGHTS ACT IS NOT ENTITLED TO PRECLEARANCE UNDER SECTION 5 OF THE ACT

It has long been established that retrogression in the voting strength of minority voters constitutes a discriminatory effect precluding preclearance under Section 5. See *Miller*, 115 S. Ct. at 2483; *City of Lockhart* v. *United States*, 460 U.S. 125, 134 (1983); *Beer* v. *United States*, 425 U.S. 130, 141 (1976). In *Beer*, 425 U.S. at 141, 142 n.14, the Court stated that a nonretrogressive but unconstitutionally dilutive voting change also violates Sections. In amending the Voting Rights Act in 1982, Congress, referring to that statement in *Beer*, indicated that vote dilution in violation of amended Section 2 should preclude preclearance under Section 5 as well: The Senate Judiciary Committee Report on the amendments stated that, "[i]n light of the amendment to section 2, it is intended that a section 5 objection also follow if a new voting procedure itself so discriminates as to violate section 2." S. Rep. No. 417, 97th Cong., 2d Sess. 12 n.31 (1982). Accordingly, the Department of Justice's regulations establishing procedures for the implementation of Section 5 provide that, even where a "submitted change is free of discriminatory purpose and retrogressive effect," the Attorney General nonetheless shall withhold preclearance where "a bar to implementation of the change is necessary to prevent a clear violation of amended Section 2." 28 C.F.R. 51.55(b)(2). Whether Congress viewed

vote dilution in violation of Section 2 as a prohibited discriminatory "effect" under Section 5, or, alternatively, as an equitable defense that should preclude a declaratory judgment under Section 5, Congress intended that such a violation should be a bar to preclearance.

1. a. Both Section 2 and Section 5 prohibit the discriminatory denial or abridgement of voting rights. Section 5 precludes preclearance of voting changes that will have the discriminatory "effect" of "denying or abridging the right to vote," and Section 2 prohibits the use of voting practices that "result[]" in a discriminatory "denial or abridgment of the right * * * to vote." It is well established that a showing of discriminatory purpose is not required in order to show either discriminatory "effect" or discriminatory "results." The similarity in meaning of the terms "effect" and "results" suggests that Congress viewed vote dilution that amounts to a discriminatory "result[]" under Section 2 as also constituting a prohibited discriminatory "effect" under Section 5. Especially in view of Section 5's purpose to prevent the perpetuation of discriminatory electoral systems by jurisdictions with a history of voting discrimination, *South Carolina* v. *Katzenbach*, 383 U.S. 301, 328 (1966), the bar on discriminatory "effect[s]" in Section 5 is most naturally read to incorporate the Section 2 prohibition on discriminatory vote dilution.

Reading Section 5 as prohibiting preclearance of voting changes that violate Section 2 is also supported by equitable principles governing declaratory judgments. Section 5 specifies a declaratory judgment action as the mechanism by which judicial preclearance may be obtained. See also 28 C.F.R. 51.52(a) (in determining whether to object to a proposed change, the Attorney General "shall make the same determination that would be made by the court in an action for a declaratory judgment"). The Declaratory Judgment Act provides that any federal court that otherwise has jurisdiction "*may* declare the rights and other legal relations of any interested party." 28

U.S.C. 2201 (emphasis added). The declaratory judgment remedy is "equitable in nature," and "equitable defenses may be interposed," *Abbott Laboratories* v. *Gardner*, 387 U.S. 136, 155 (1967), including one based on the principle that equity withholds its assistance from persons using the asserted right in a manner contrary to the public interest. *Morton Salt Co.* v. *G.S. Suppiger Co.*, 314 U.S. 488, 492-493 (1942); see *Wilton* v. *Seven Falls Co.*, 115 S. Ct. 2137, 2143 (1995) (district courts have "unique breadth of * * * discretion to decline to enter a declaratory judgment"); *Public Serv. Comm'n* v. *Wycoff Co.*, 344 U.S. 237, 241 (1952) (Declaratory Judgment Act "confers a discretion on the courts rather than an absolute right upon the litigant"); *Eccles* v. *Peoples Bank*, 333 U.S. 426, 431 (1948) ("A declaratory judgment, like other forms of equitable relief, should be granted only as a matter of judicial discretion, exercised in the public interest.").

Discriminatory vote dilution in violation of Section 2 is manifestly contrary to the public interest, and is thus an appropriate ground for denial of a declaratory judgment of preclearance. "Congress intended § 5 to have 'the broadest possible scope.'" *Morse* v. *Republican Party of Virginia*, 116 S. Ct. 1186, 1198 (1996) (opinion of Stevens, J.) (quoting *Allen* v. *State Bd. of Elections*, 393 U.S. 544, 566-567 (1969)). It would be an "anomalous result"—one Congress plainly did not intend—if the preclearance requirement were no bar to "voting practices known to be illegal" under Section 2. *Morse*, 116 S. Ct. at 1201 & n.25 (opinion of Stevens, J.). Thus, preclearance should be denied to a voting change when it is known that the change will result in the unlawful dilution of minority voting strength, regardless of whether the change was instituted for a discriminatory purpose or had a retrogressive effect.

b. The question whether discriminatory vote dilution violates Section 5 first arose in *Beer* v. *United States*, 425

U.S. 130 (1976). In *Beer*, the Court stated that Section 5's prohibition of discriminatory effects sought principally "to insure that no voting-procedure changes would be made that would lead to a retrogression in the position of racial minorities with respect to their effective exercise of the electoral franchise," *id.* at 141; a nonretrogressive change could not violate Section 5, the Court concluded, "unless the [change] itself so discriminates on the basis of race or color as to violate the Constitution." *Ibid.* *Beer* cited the cases of discriminatory vote dilution as examples of non-retrogressive yet unconstitutional changes that would violate Section 5. 425 U.S. at 142 n.14 (citing, *inter alia*, *White* v. *Regester*, 412 U.S. 755 (1973)).

At the time *Beer* was decided, the Court's decision in *White* v. *Regester* established the standard for unconstitutional racial vote dilution. Under that standard, a plaintiff could prove unconstitutional vote dilution by demonstrating that "the political processes leading to nomination and election were not equally open to participation by the group in question—that its members had less opportunity than did other residents in the district to participate in the political processes and to elect legislators of their choice." 412 U.S. at 766. When this Court in *Beer* referred to a change that "itself so discriminates * * * as to violate the Constitution," it was referring to a change that violated *White* v. *Regester*'s vote dilution standards. See *Beer*, 425 U.S. at 141, 142 n.14 ("It is possible that a legislative reapportionment could be a substantial improvement over its predecessor in terms of lessening racial discrimination, and yet nonetheless continue so to discriminate on the basis of race or color as to be unconstitutional.") (citing, *inter alia*, *White* v. *Regester*, *supra*).

Because vote-dilution standards under the Constitution and Section 2 were generally coextensive at the time *Beer* was decided, *Beer*'s discussion meant that practices that violated Section 2 would not be entitled to preclearance

under Section 5. Subsequently, however, in *City of Mobile* v. *Bolden*, 446 U.S. 55 (1980), the Court held that proof of discriminatory purpose was necessary to establish unconstitutional vote dilution. Concluding that *Bolden*'s purpose test put plaintiffs to an inappropriately difficult burden, Congress amended Section 2 in 1982 to codify, as the statutory standard for proving unlawful dilution, the discriminatory "results" test originally set forth in *White* v. *Regester*. See *Gingles*, 478 U.S. at 43-44. Amended Section 2 thus prohibits any practice "which results in a denial of abridgement" of the right to vote on the basis of race or color. 42 U.S.C. 1973(a). Tracking the language in *White* v. *Regester*, Section 2 provides that a violation will be established if "the political processes leading to nomination or election * * * are not equally open to participation by members of a [protected class] in that its members have less opportunity than other members of the electorate to participate in the political process and to elect representatives of their choice." 42 U.S.C. 1973(b). The 1982 amendments also extended Section 5's preclearance requirement, which was due to expire on August 8, 1982. Pub. L. No. 97-205, § 2(b)(4), 96 Stat. 133 (1982).

c. In enacting the 1982 amendments, Congress sought to reaffirm the principle, articulated in *Beer*, that a voting change that illegally dilutes minority voting strength is not entitled to preclearance under Section 5. The Senate Report to the 1982 amendments made that point explicit:

> Under the rule of *Beer* v. *United States*, 425 U.S. 130 (1976), a voting change which is ameliorative is not objectionable unless the change "itself so discriminates on the basis of race or color as to violate the Constitution." 425 U.S. at 141; *see also* 142 n.14 (citing to the dilution cases from *Fortson* v. *Dorsey*[, 379 U.S. 433 (1965),] through *White* v. *Regester*). In light of the amendment to section 2, *it is intended that a section 5 objection also follow*

> *if a new voting procedure itself so discriminates as to violate section 2.*

S. Rep. No. 417, 97th Cong., 2d Sess. 12 n.31 (1982) (emphasis added). The Senate Report is the "authoritative source" for determining Congress's intent in enacting those amendments. *Gingles*, 478 U.S. at 43 n.7. Congress thus approved *Beer*'s interpretation of the Act to require a denial of preclearance to changes that unlawfully dilute minority voting strength. It made clear its intention that that interpretation would apply to violations of the amended Section 2. See *Morse*, 116 S. Ct. at 1201 n.52 (opinion of Stevens, J.).[18]

The House Report to the amendments similarly concluded that a Section 2 violation should result in the denial of preclearance under Section 5:

> Under the Voting Rights Act, whether a discriminatory practice or procedure is of recent origin affects only the mechanism that triggers relief, i.e., litigation [under Section 2] or preclearance [under Section 5]. The lawfulness of such a practice should not vary depending on when it was adopted, i.e., whether it is a change.

H.R. Rep. No. 227, 97th Cong., 1st Sess. 28 (1981). The House Report "indicates that the substantive standards for § 2 and § 5 violations are the same, so long as the challenged practice represents a change from 1965 conditions" such that Section 5 is triggered. *Morse*, 116 S. Ct. at 1201 n. 25 (opinion of Stevens, J.). That result makes sense because, "[i]f § 5 were narrower than § 2, then a covered jurisdiction would not need to preclear changes in voting practices known to be illegal." *Id.* at 1201. Because Congress approved of this existing reading of Section 5, there was no reason to amend Section 5 in 1982.[19]

The legislative background thus establishes that changes that violate Section 2 are not entitled to preclearance. As this Court has ruled in interpreting the Voting Rights Act, "[w]hen a Congress that re-enacts a statute voices its approval of an administrative or other interpretation thereof, Congress is treated as having adopted that interpretation, and this Court is bound thereby." *United States* v. *Board of Comm'rs*, 435 U.S. 110, 134 (1978). The district court erred in ruling to the contrary.

d. Administrative and legislative actions after enactment of the 1982 amendments confirm that voting changes that dilute minority voting strength under Section 2 are not entitled to preclearance. In 1985, the Department of Justice issued the first set of proposed Section 5 regulations following the Act's amendment. See 50 Fed. Reg. 19,122. One of the proposed regulations (28 C.F.R. 51.56(c)(1)) required the Attorney General to withhold preclearance "based upon violation of Section 2." 50 Fed. Reg. at 19,131. As finally adopted, the Department's regulation requires that preclearance be withheld where "a bar to implementaton of the change

---

[18] The Senate Report's reference to *Beer* also shows that Congress viewed vote dilution as a prohibited "effect" under Section 5. In a discussion focussing on Section 5's effects test, the *Beer* Court referred to a dilutive change as one that would not simply bar preclearance for equitable reasons independent of Section 5's terms, but that would "violate § 5" itself. While noting that an ameliorative change would not ordinarily "have the 'effect' of diluting or abridging the right to vote on account of race," the *Beer* Court concluded that an ameliorative change *would* have such an effect if it were unlawfully dilutive under the non-purpose-based *White* v. *Register* vote-dilution standard—the standard that the 1982 Congress reinstated in amended Section 2. *Beer*, 425 U.S. 141, 142 n.14.

[19] The Court has reserved the specific question whether a violation of amended Section 2 requires the denial of preclearance. *City of Lockhart* v. *United States*, 460 U.S. 125, 133 n.9 (1983) (referring to appellee Cano's argument); see also 81-802 Brief for Appellee Cano at 48-52, *Lockhart*, *supra*.

is necessary to prevent a clear violation of amended section 2." 28 C.F.R. 51.55(b)(2).[20]

Congress held oversight hearings on the proposed regulations, in which the Assistant Attorney General for Civil Rights testified in detail that Section 5 objections might be based on clear Section 2 violations. See *Proposed Changes to Regulations Governing Section 5 of the Voting Rights Act: Oversight Hearings Before the Subcomm. on Civil and Constitutional Rights of the House Comm. on the Judiciary*, 99th Cong., 1st Sess. 149, 151-152 (1985) (*Oversight Hearings*) (statement of Wm. Bradford Reynolds). Witnesses noted that, not only had Congress in 1982 intended that Section 5 preclearance be denied on the basis of violation of Section 2, but that concerns of judicial and administrative economy also supported that construction. The facts relevant to vote dilution in violation of Section 2 are usually also relevant to purpose under Section 5. See, *e.g.*, *Johnson* v. *De Grandy*, 114 S. Ct. 2647, 2656-2657 & n.9 (1994) (Senate report [21] or "*Zimmer*" [22] factors relevant to Section 2

[20] The regulation authorizes the Attorney General to deny preclearance to prevent a "clear" violation of Section 2. 28 C.F.R. 51.55(b)(2) (J.S. App. 168a). The undisputed evidence in this case established such a clear Section 2 violation. The Court thus need not reach the question whether the "clear violation" standard applies in judicial proceedings. We note, however, that the preamble to the Department's final Section 5 regulation states that the "clear violation" standard was incorporated to account for the limitations inherent in the administrative preclearance process, including a 60-day time limit for making preclearance determinations, the lack of hearing procedures or subpoena power, and the absence of a formal record. 52 Fed. Reg. 487 (1987). Under such procedural limitations, it might not be possible to detect a violation unless it was clear from the submission.

[21] S. Rep. No. 417, 97th Cong., 2d Sess. 28-30 (1982).

[22] *Zimmer* v. *McKeithen*, 485 F.2d 1297 (5th Cir. 1973), aff'd *sub nom. East Carroll Parish School Bd.* v. *Marshall*, 424 U.S. 636 (1975).

vote dilution); *Rogers*, 458 U.S. at 620-622 (*Zimmer* factors relevant to purpose under Section 5); see also 52 Fed. Reg. at 487 ("the analysis used in the Section 5 preclearance process requires evaluation of precisely the same factors that Congress specified as being relevant to a determination under Section 2"). "To hold that section 2 is not fully applicable would mean that the section 2 issues would invariably have to be tried in another forum"—"a prescription for more litigation and a waste of the resources of the parties, the Department of Justice, and the courts." *Oversight Hearings* at 47 (testimony of Laughlin McDonald).

Following the oversight hearings, the House Judiciary Subcommittee on Civil and Constitutional Rights issued a report. The report expressly endorsed the Department's construction of Section 5 as authorizing objections on the basis of Section 2 violations:

> [T]he Subcommittee concludes that it is a proper interpretation of the legislative history of the 1982 amendments to use Section 2 standards in the course of making Section 5 determinations.

Subcomm. on Civil and Constitutional Rights of the House Comm. on the Judiciary, 99th Cong., 2d Sess., *Ser. No. 9, Voting Rights Act: Proposed Section 5 Regulations* 5 (Comm. Print 1986). Congress's failure to alter the enforcing agency's policy, after full review of that policy, "make[s] out an unusually strong case of legislative acquiescence in and ratification by implication of" the agency's position. *Bob Jones Univ.* v. *United States*, 461 U.S. 574, 599, 601-602 (1983).

e. Particularly in light of the close congressional oversight, the Department's regulation is entitled to "great deference." *United States* v. *Board of Comm'rs*, 435 U.S. at 131-132. The district court, however, incorrectly refused to accord any deference to the Department's interpretation of the Act. It reasoned that deference is

inappropriate where the federal courts have concurrent authority to interpret a statute in the first instance, as they do under Section 5. J.S. App. 18a-19a (citing *Litton Fin. Printing Div.* v. *NLRB*, 501 U.S. 190, 203 (1991)). That reasoning is squarely contrary to this Court's long and consistent practice of deferring to the Attorney General's reasonable constructions of Section 5. See, *e.g.*, *Presley* v. *Etowah County Comm'n*, 502 U.S. 491, 508 (1992); *City of Pleasant Grove*, 479 U.S. at 468; *NAACP* v. *Hampton County Election Comm'n*, 470 U.S. 166, 178-179 (1985); *United States* v. *Board of Comm'rs*, 435 U.S. at 131-132.[23]

2. None of the reasons the district court gave supports its rejection of the clear congressional intent and consistent administrative construction establishing that changes violating Section 2 are not entitled to preclearance under Section 5.

The district court relied on the use of different terms—"results" in Section 2 and "effect" in Section 5—to conclude that the statutory text "unambiguous[ly]" rejected the principle that Section 5 preclearance can be denied based on a Section 2 violation. J.S. App. 17a-18a. Congress's use of different terms in the two sections is best explained, however, not as expressing a decision that Section 5 must tolerate unlawful vote dilution, but as indicating that retrogression is a discriminatory effect under Section 5, see *Beer*, 425 U.S. at 141, whereas retrogression, standing alone, is not a discriminatory "result" under Section 2, see *Johnson* v. *De Grandy*, 114 S. Ct. 2647, 2654-2657 (1994).[24]

[23] *Litton* did not hold otherwise. It held that it is inappropriate to defer to an agency's decision on a non-statutory matter that the courts normally have the primary power to determine, and that therefore lies outside the agency's area of special competence. 501 U.S. at 202 (noting that the NLRB's decision was "not grounded in terms of any need * * * 'to effectuate the policies of the Act,'" but rather was based on construction of a contract, for whose interpretation "'[a]rbitrators and courts are still the principal sources"). The Court reaffirmed in *Litton* that the NLRB's interpretations of statutory language were entitled to "substantial deference." *Id.* at 201-202.

The district court also noted that the allocation of the burden of proof differs under Section 5 and Section 2, and concluded that "[t]hat crucial procedural difference strongly suggests the inappropriateness of importing section 2 standards into section 5." J.S. App. 16a. The Court's language in *Beer*, however, suggests that the burden to show dilution as a bar to preclearance remains with the Attorney General. In noting that vote dilution can be a basis for denying preclearance, the Court stated that "[*t*]*he United States has made no claim* that [the disputed plan] suffers from any such disability, nor could it rationally do so." 425 U.S. at 142 n.14 (emphasis added). Thus, in ratifying *Beer*'s approach in the 1982 Voting Rights Act amendments, Congress likely contemplated that the United States bears the burden to make out a Section 2 claim as a basis for defeating preclearance, just as it ordinarily would as a plaintiff in Section 2 litigation. In addition, to the extent that the rule requiring denial of preclearance to unlawfully dilutive changes derives from the equitable public interest defense to a declaratory judgment action, that reasoning also would place the burden of proof of a Section 2 violation on the United States. The United States has, in practice, therefore assumed the burden to prove a Section 2 violation as a basis for denial of Section 5 preclearance.

Finally, the district court read this Court's decision in *Miller* as "repudiat[ing] the Department's interpretation of section 5," and as establishing that "section 5 and its standards have no place in a section 5 preclearance action." J.S. App. 21a, 23a. But *Miller* did not address

[24] Moreover, even if Section 5's "effect" language does not encompass nonretrogressive dilution, established equitable principles support denial of preclearance to unlawfully dilutive redistricting plans. See pages 34-35, *supra*.

the issue whether preclearance should be withheld on the basis of a Section 2 violation, for the Section 5 objection at issue there was based exclusively "on the ground that the submitted plans violated § 5's purpose element." *Miller*, 115 S. Ct. at 2492. As noted, *Miller* held that forbidden purpose could not be inferred from the jurisdiction's decision not to subordinate traditional districting principles so as to maximize the number of majority-minority districts. *Id.* at 2489-2490, 2492. But *Miller* did not hold that preclearance must be granted in the face of a Section 2 violation, *i.e.*, where racially polarized voting deprives minority voters of an equal opportunity to elect their chosen candidates, and it is possible to create "more than the existing number of reasonably compact districts with a sufficiently large minority population to elect candidates of their choice." *De Grandy*, 114 S. Ct. at 2655. Congress plainly did not intend that "anomalous result." *Morse*, 116 S. Ct. at 1201 & n.25 (opinion of Stevens, J.).

CONCLUSION

The judgment of the district court should be reversed and the case remanded for entry of a declaratory judgment that the redistricting plan at issue is not entitled to preclearance under Section 5. In the alternative, the judgment should be reversed and the case remanded for further proceedings to consider, under proper legal stan-

dards, the evidence concerning discriminatory purpose and dilutive effect.

Respectfully submitted.

WALTER DELLINGER
Acting Solicitor General

DEVAL L. PATRICK
Assistant Attorney General

PAUL BENDER
Deputy Solicitor General

CORNELIA T.L. PILLARD
Assistant to the Solicitor General

DAVID K. FLYNN
STEVEN H. ROSENBAUM
SAMUEL R. BAGENSTOS
Attorneys

AUGUST 1996

☆ U. S. GOVERNMENT PRINTING OFFICE: 1996 405017 40168

Supreme Court, U.S.
FILED
AUG 1 1996
CLERK

(13) (12)

Nos. 95-1455 & 95-1508

IN THE

Supreme Court of the United States

OCTOBER TERM, 1996

JANET RENO, ATTORNEY GENERAL OF THE UNITED STATES,
Appellant, and
GEORGE PRICE, *et al.*,
Appellants,
v.
BOSSIER PARISH SCHOOL BOARD,
Appellee.

On Appeal from the United States District Court for the District of Columbia

---

BRIEF OF APPELLANTS GEORGE PRICE, ET AL.

BARBARA R. ARNWINE
THOMAS J. HENDERSON
BRENDA WRIGHT
SAMUEL L. WALTERS

LAWYERS' COMMITTEE FOR
CIVIL RIGHTS UNDER LAW
1450 G Street, N.W., Suite 400
WASHINGTON, D.C. 20005
(202) 662-8322

WALTER A. SMITH, JR.
PATRICIA A. BRANNAN*
JOHN W. BORKOWSKI

HOGAN & HARTSON L.L.P.
555 Thirteenth Street, N.W.
Washington, D.C. 20004
(202) 637-8686

* Counsel of Record

Counsel for Appellants George Price, et al.

57 pp

QUESTIONS PRESENTED

I. Whether evidence probative of discriminatory purpose under *Village of Arlington Heights v. Metropolitan Housing Development Corp.*, 429 U.S. 252 (1977), may be excluded from consideration in a preclearance action under Section 5 of the Voting Rights Act solely because that evidence also would be relevant to a discrimination action brought under Section 2 of the Act.

II. Whether evidence probative of discriminatory purpose under *Village of Arlington Heights v. Metropolitan Housing Development Corp.*, 429 U.S. 252 (1977), may be excluded from consideration in a preclearance action under Section 5 solely because the election plan at issue is not retrogressive.

III. Whether the court in a Section 5 preclearance action may itself assume the burden of explaining and rebutting clear evidence of discriminatory purpose when the covered jurisdiction fails to carry that burden.

IV. Whether a covered jurisdiction meets its burden of proof in a Section 5 preclearance action when it merely identifies some nondiscriminatory reasons for its redistricting plan, but fails to rebut clear evidence showing other discriminatory reasons for the plan.

V. Whether the fact that a nonretrogressive voting change would result in a clear violation of Section 2 constitutes an independent basis for the denial of preclearance under Section 5.

PARTIES TO THE PROCEEDINGS

The Defendant-Intervenors below, Appellants George Price, *et al.*, who are not listed in the caption are:

Leroy Harry
Thelma Harry
Clifford Doss
Otis Easter
Jerry Hawkins
Barbara Stevens King
Hurie Jones
Grover Cleveland Jaggers
Floyd Marshall
Rubie Fowler

All other parties are named in the caption.

TABLE OF CONTENTS

	Page
QUESTIONS PRESENTED	i
PARTIES TO THE PROCEEDINGS	ii
TABLE OF AUTHORITIES	vi
OPINIONS BELOW	1
JURISDICTION	2
CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED	2
STATEMENT OF THE CASE	3
I. INTRODUCTION	3
II. STATEMENT OF FACTS	5
A. Voting Polarization and the Exclusion of Blacks From the Board	5
B. Prior Uncontested Discrimination in Voting and Education, and the Exclusion of Blacks From Educational Policymaking	7
C. The Redistricting Process	10
1. Police Jury Redistricting	10
2. The School Board's Initial Decision	13
3. The School Board's Reversal of Its Initial Decision and Refusal to Consider Proposals from the Black Community	14
4. Post-hoc Rationalizations for the Board's Decision	21

TABLE OF CONTENTS—Continued

Page

III. THE PROCEEDINGS BELOW 23

A. The Attorney General's Denial of Preclearance 23

B. The Declaratory Judgment Action 24

SUMMARY OF THE ARGUMENT 26

ARGUMENT 28

I. THE BOSSIER PARISH SCHOOL BOARD'S REDISTRICTING PLAN VIOLATES SECTION 5 OF THE VOTING RIGHTS ACT BECAUSE IT WAS ADOPTED WITH A DISCRIMINATORY PURPOSE 28

A. The Majority Erred in Refusing to Consider Evidence of Discriminatory Purpose Under *Arlington Heights* Solely Because That Evidence Also Would Be Relevant in a Section 2 Case. 29

B. The Majority Erred in Concluding That Discriminatory Purpose Cannot Infect a Nonretrogressive Plan 33

C. The Majority Erred in Providing Its Own Rebuttal to Board-Member Statements Indicating Discriminatory Intent. 36

D. The Majority Erred in Concluding that the Presence of Some Legitimate Reasons for Adopting the Plan Was Sufficient for Preclearance Under Section 5. 38

TABLE OF CONTENTS—Continued

Page

E. When the Majority's Errors Are Cured, It Is Plain that the Board's Action Was Motivated in Part By Discriminatory Purpose 40

II. THE BOSSIER PARISH SCHOOL BOARD'S PROPOSED REDISTRICTING PLAN ALSO VIOLATES SECTION 5 BECAUSE ITS IMPLEMENTATION WOULD CONSTITUTE A CLEAR VIOLATION OF SECTION 2. 43

CONCLUSION 46

TABLE OF AUTHORITIES

CASES:	Page
Barnett v. Daly, 32 F.3d 1196 (7th Cir. 1994)	35, 37
Beer v. United States, 425 U.S. 130 (1976)	34, 43
Bossier Parish Sch. Bd. v. Reno, 907 F. Supp. 434 (D.D.C. 1995)	1
Brown v. Board of Educ., 347 U.S. 483 (1954)	7
Busbee v. Smith, 549 F. Supp. 494 (D.D.C. 1982), *aff'd*, 459 U.S. 1166 (1983)	32
Bush v. Vera, Nos. 94-805, 94-806 and 94-988, 1996 WL 315857 (U.S. June 13, 1996)	*passim*
Chisom v. Roemer, 501 U.S. 380 (1991)	45
City of Pleasant Grove v. United States, 479 U.S. 462 (1987)	31, 35, 39
City of Port Arthur v. United States, 517 F. Supp. 987 (D.D.C. 1981), *aff'd*, 459 U.S. 159 (1982)	32
City of Richmond v. United States, 422 U.S. 358 (1975)	32
Clark v. Calhoun County, 21 F.3d 92 (5th Cir. 1994)	6
Columbus Bd. of Educ. v. Penick, 443 U.S. 449 (1979)	34
Diaz v. San Jose Unified Sch. Dist., 733 F.2d 660 (9th Cir. 1984)	33

TABLE OF AUTHORITIES—Continued

	Page
E.E.O.C. v. Ethan Allen, Inc., 44 F.3d 116 (2d Cir. 1994)	41
Garza v. County of Los Angeles, 918 F.2d 763 (9th Cir. 1990), cert. denied, 498 U.S. 1028 (1991)	37, 42
Ketchum v. Byrne, 740 F.2d 1398 (7th Cir. 1984), cert. denied, 471 U.S. 1135 (1985)	37
Lemon v. Bossier Parish Sch. Bd., 240 F. Supp. 709 (W.D. La. 1965), aff'd, 370 F.2d 847 (5th Cir.), cert. denied, 388 U.S. 911 (1967)	8
Louisiana v. United States, 380 U.S. 145 (1965)	7
Major v. Treen, 574 F. Supp. 325 (E.D. La. 1983).	7
McCain v. Lybrand, 465 U.S. 236 (1984)	28
McKennon v. Nashville Banner Publishing Co., 115 S. Ct. 879 (1995)	6
Miller v. Johnson, 115 S. Ct. 2475 (1995)	*passim*
Miller v. WLFI Radio Inc., 687 F.2d 136 (6th Cir. 1982)	38
Mobile v. Bolden, 446 U.S. 55 (1980)	31, 43, 44
Morse v. Republican Party of Virginia, 116 S. Ct. 1186 (1996)	44, 45
N.L.R.B. v. Great Dane Trailers, Inc., 388 U.S. 26 (1967)	38

TABLE OF AUTHORITIES—Continued

	Page
New York v. United States, 874 F. Supp. 394 (D.D.C. 1994)	25, 39
Perkins v. City of West Helena, 675 F.2d 201 (8th Cir.), aff'd, 459 U.S. 801 (1982)	37
Price Waterhouse v. Hopkins, 490 U.S. 228 (1989)	6
Reno v. Bossier Parish Sch. Bd., 116 S. Ct. 1540 (1996)	6
Rogers v. Lodge, 458 U.S. 613 (1982)	26, 30, 31
Rome v. United States, 446 U.S. 156 (1980)	28
Romer v. Evans, 116 S. Ct. 1620 (1996)	29
Shaw v. Hunt, Nos. 94-923 and 94-924, 1996 WL 315870 (U.S. June 13, 1996)	*passim*
Shaw v. Reno, 113 S. Ct. 2816 (1993)	21, 24
Singleton v. Jackson Mun. Separate Sch. Dist., 419 F.2d 1211 (5th Cir. 1969), cert. denied sub nom. West Feliciana Parish Sch. Bd. v. Carter, 396 U.S. 1032 (1970)	8
Southwest Merchandising Corp. v. N.L.R.B., 53 F.3d 1334 (D.C. Cir. 1995)	41
St. Mary's Honor Center v. Hicks, 113 S. Ct. 2742 (1993)	41
Texas Dep't of Community Affairs v. Burdine, 450 U.S. 248 (1981)	38

TABLE OF AUTHORITIES—Continued

	Page
Thornburg v. Gingles, 478 U.S. 30 (1986)	6
United States v. Virginia, Nos. 94-1941 and 94-2107, 1996 WL 345786 (U.S. June 26, 1996)	29
Village of Arlington Heights v. Metropolitan Housing Dev. Corp., 429 U.S. 252 (1977)	*passim*
Washington v. Davis, 426 U.S. 229 (1976)	32, 34
White v. Regester, 412 U.S. 755 (1973)	44
Zimmer v. McKeithen, 485 F.2d 1297 (5th Cir. 1973), aff'd sub nom. East Carroll Parish Sch. Bd. v. Marshall, 424 U.S. 636 (1976)	31
CONSTITUTIONAL PROVISIONS:	
U.S. Const. amend XIII	7
U.S. Const. amend. XV	2
U.S. Const. amend. XIV	2, 4
STATUTES:	
Section 2 of the Voting Rights Act, 42 U.S.C. § 1973	*passim*
Section 5 of the Voting Rights Act, 42 U.S.C. § 1973C	*passim*
La. R.S. 17:71.3E (1995)	13
La. R.S. 17:71.3E(2)(a) (1995)	19

TABLE OF AUTHORITIES—Continued

Page

La. R.S. 17:71.3E(3)(a) (1995)..... 19

LEGISLATIVE MATERIAL:

S. Rep. No. 417, 97th Cong., 2d Sess. (1982). 44

IN THE

Supreme Court of the United States

OCTOBER TERM, 1996

Nos. 95-1455 & 95-1508

JANET RENO, ATTORNEY GENERAL OF THE UNITED STATES,
Appellant, and
GEORGE PRICE, *et al.*,
Appellants,

v.

BOSSIER PARISH SCHOOL BOARD,
Appellee.

**On Appeal from the
United States District Court
for the District of Columbia**

BRIEF OF APPELLANTS GEORGE PRICE, ET AL.

OPINIONS BELOW

The decision of the United States District Court for the District of Columbia ("D.C. District Court") is reported at 907 F. Supp. 434 (D.D.C. 1995). App. 1a-65a.[1]

---

[1] In this brief, citations are to the Appendix ("App.") filed with the Jurisdictional Statement of Janet Reno, *et al.*, on March 11, 1996, including the numerous stipulations of the parties ("Stip."); to the Joint Appendix ("J.A.") filed on August 1, 1996; to the transcript of the hearing in the D.C. District Court on April 10 and 11, 1995 ("Tr."); and to exhibits submitted at that time by the appellee ("Plaintiff's Exh."), and the two appellants, Janet Reno

JURISDICTION

The decision of the three-judge panel of the D.C. District Court, which had jurisdiction pursuant to 42 U.S.C. § 1973c, was entered on November 2, 1995. The Attorney General's notice of appeal was filed on December 27, 1995. App. 163a-164a. The notice of appeal on behalf of defendant-intervenors George Price, *et al.* ("Defendant-Intervenors"), was filed on January 2, 1996. On February 28, 1996, the Chief Justice extended the time in which to file a jurisdictional statement on behalf of Defendant-Intervenors to March 18, 1996. The Attorney General and Defendant-Intervenors timely filed jurisdictional statements, and the Court noted probable jurisdiction on June 3, 1996. The Court has jurisdiction over this appeal pursuant to 42 U.S.C. § 1973c.

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

Section 1 of the Fourteenth Amendment to the United States Constitution provides in pertinent part that "[n]o state shall . . . deny to any person within its jurisdiction the equal protection of the laws." The Fifteenth Amendment provides that "[t]he right of citizens of the United States to vote shall not be denied or abridged by the United States or by any State on account of race, color, or previous condition of servitude." Sections 2 and 5 of the Voting Rights Act, 42 U.S.C. § § 1973, 1973c, are reproduced in the Appendix to the Jurisdictional Statement filed by Janet Reno in No. 95-1955. App. 165a-167a.

("U.S. Exh.") and defendant-intervenors George Price, *et al.* ("D-I Exh.").

STATEMENT OF THE CASE

I. INTRODUCTION

This case concerns the actions of the 12-member Bossier Parish School Board ("Bossier" or the "Board"). In Bossier Parish, racially polarized voting and majority-white, single-member districts precluded blacks from ever being elected to the Board, even though they make up 20% of the populace. Year in and year out the 12 majority-white districts elected all-white boards, and year in and year out the interests of blacks in participating in educational policy-making and in advancing the long-delayed desegregation of the schools was thwarted.

Nevertheless, in its 1990 redistricting, the School Board refused even to consider a plan that would have created a majority-minority district, even though two such districts could have been drawn. Worse, in order to avoid drawing such a district and in order again to draw 12 majority-white districts, the Board transgressed many of its own redistricting criteria; *i.e.*, it forced incumbents to run against each other, it drew one district containing almost half of the Board's entire geographic jurisdiction and others that are not compact by the admission of the Board's own consultant, and it created some districts without any schools in them at all and that ignored school attendance zones. Furthermore, the explanations offered by the Board for adopting such districts were plainly pretextual, and statements by individual Board members confirmed the Board's intent to prevent blacks from electing their candidates of choice.

In these circumstances, and under the well-established standards articulated by this Court in *Village of Arlington Heights v. Metropolitan Housing Development Corp.*, 429 U.S. 252 (1977), the Attorney General not surprisingly refused preclearance under Section 5 because the Board's redistricting plan had been adopted with a discriminatory purpose. But, by a 2-1 vote, the

three-judge court below, failing to apply the proper legal standard, held that the Board had met its burden of proving that racial discrimination was not a factor in the adoption of its redistricting plan.

As we will show, the majority was able to reach this result only by refusing to consider most of the critical evidence of record, and by offering justifications for the rest that even the Board itself had not offered. As we will also show, the majority's approach flatly contradicts this Court's requirements that the Board itself establish the absence of any discriminatory purpose and that all relevant information be considered in determining whether the Board met that burden. When those requirements are followed, as Judge Gladys Kessler held in dissent below, the evidence of record "demonstrates overwhelmingly that the School Board's decision . . . was motivated by discriminatory purpose." App. 63a.

It would be anomalous if this Court now rejected Judge Kessler's diligent application of Section 5's purpose prong, for in order to guarantee constitutional Equal Protection the Court recently has imposed stringent requirements on states openly seeking to draw majority-minority districts. *See Shaw v. Hunt,* Nos. 94-923 and 94-924, 1996 WL 315870 (U.S. June 13, 1996) *("Shaw II")*; *Bush v. Vera*, Nos. 94-805, 94-806 and 94-988, 1996 WL 315857 (U.S. June 13, 1996). If, at the same time, the Court endorsed the majority's truncated purpose inquiry and abandoned the rigorous standards it has traditionally applied to jurisdictions seeking to perpetuate the long-standing exclusion of blacks from full participation in the political process, the result would be to subvert the central premise of the Fourteenth Amendment. As Justice O'Connor has recently written, "the driving force behind the adoption of the Fourteenth Amendment was the desire to end legal discrimination against blacks." *Miller v. Johnson,* 115 S. Ct. 2475, 2497 (1995) (O'Connor, J., concurring). *See also Vera*, 1996 WL 315857, at *24 (O'Connor, J.,

concurring). The Bossier Parish School Board contradicted this fundamental proposition in this case, and its action should not be upheld by this Court.

II. STATEMENT OF FACTS

The facts in this case are largely undisputed and are nearly all either stipulated or unrebutted. Rather, the dispute in the case is over which of these facts may be taken into account in determining whether the Board met its burden to show that its redistricting plan was in no part motivated by a discriminatory purpose. Three kinds of facts are relevant to that issue: (a) the demographics of Bossier Parish and the longstanding exclusion of blacks from the School Board; (b) the prior undisputed discrimination against blacks in voting and in the Parish's schools, and the ongoing exclusion of blacks from any policy-making role in the schools; and (c) the circumstances surrounding the adoption of the redistricting plan.

A. Voting Polarization and the Exclusion of Blacks From the Board

In 1990, blacks comprised 20.1% of the total population of Bossier Parish, and 17.6% of the voting age population. App. 2a. Blacks also comprised 29% of the students in the Parish's public schools. *Id.* at 4a n.2.

The parties stipulated and the court below found that the black population of the Parish is concentrated in two areas; more than 50% of the black residents live in Bossier City, App. 2a; *id.* at 68a (Stip. 10), and another significant percentage of those residents is concentrated in communities in the northern rural portion of the Parish. *Id.*

Stipulated facts and unrebutted testimony also show that black voters in Bossier Parish are politically cohesive. *See, e.g.,* App. 123a (Stip. 184). The parties likewise agreed to facts showing that voting in the Parish is racially polarized, *id.* at 40a, 122a-27a (Stip. 181-96),

and that "voting patterns in Bossier Parish are affected by racial preferences," *id.* at 122a (Stip. 181). Similarly, the stipulated facts leave no doubt that whites vote sufficiently as a bloc to enable them usually to defeat the preferred candidates of black voters. App. 127a (Stip. 196). Finally, the record showed that, as a result of these factors, no black candidate had ever been elected to the School Board. App. 4a, 40a-41a.[2]

The record furthermore showed that the creation of 12 majority-white election districts was not dictated by adherence to traditional redistricting principles. As found by Judge Kessler—the only member of the panel to address the stipulated facts concerning the Parish's demographics—"it was clearly possible to draw a redistricting plan for the Bossier Parish Schools with one or two majority-black districts, and still respect traditional districting principles." App. 41a. The majority made no contrary finding. Likewise, Judge Kessler found, and again the majority did not dispute, that "the Board's plan presents the black minority of Bossier Parish with no

---

2 This Court properly refused to supplement the record with information concerning the fact that no white candidate ran in one district and a black candidate defeated a white candidate in another district in School Board elections held *after* the district court's decision below. *Reno v. Bossier Parish Sch. Bd.*, 116 S. Ct. 1540 (1996). As this Court recently indicated in *Vera*, reliance on election results after the redistricting has been completed "is misplaced." 1996 WL 315857, at *12 fn. This is because evidence of events that occurred after the Board's decision cannot illuminate its intent at the time it made the decision. *See, e.g., McKennon v. Nashville Banner Publishing Co.*, 115 S. Ct. 879, 885 (1995); *Price Waterhouse v. Hopkins*, 490 U.S. 228, 250, 252 (1989); *id.* at 261 (O'Connor, J., concurring). This is particularly true where, as here, the pending litigation itself may well have had an impact on the election. *See, e.g., Thornburg v. Gingles*, 478 U.S. 30, 76 (1986); *Clark v. Calhoun County*, 21 F.3d 92, 96 (5th Cir. 1994).

realistic opportunity to elect any candidates of its choice to any of the board seats." App. 41a.

B. Prior Uncontested Discrimination in Voting and Education, and the Exclusion of Blacks From Educational Policymaking

The uncontested evidence also detailed the long history of discrimination against blacks in Bossier Parish. *See* App. 42a-46a; 130a-40a (Stip. 214-48). Judge Kessler, again the only member of the panel to consider this evidence, chronicled in detail the stipulated facts showing that many decades of discriminatory government action in Bossier Parish had resulted in the large-scale disenfranchisement of black voters. App. 42a-44a. Following the passage of the Thirteenth Amendment, Louisiana enacted laws intended to reduce black voting; black registration decreased by 90% within a few years. App. 43a; *id.* at 130a-31a (Stip. 215-19). In 1921, an amendment to the State Constitution required persons seeking to register to vote to "give a reasonable interpretation" of a constitutional provision. *Id.* at 44a, 132a (Stip. 221). That amendment, which disenfranchised most black citizens, was not invalidated until 1965. *Louisiana v. United States*, 380 U.S. 145 (1965). After an all-white Louisiana Democratic primary was invalidated, the party then adopted an anti-single-shot law and a majority-vote requirement for party office. App. 43a-44a; *id.* at 132a (Stip. 222); *Major v. Treen*, 574 F. Supp. 325, 341 (E.D. La. 1983).

In addition to this discrimination in voting, which affected all of the Parish's governing bodies, the Board itself also maintained *de jure* segregation in its schools long after *Brown v. Board of Education*, 347 U.S. 483 (1954). App. 44a-46a; App. 136a (Stip. 235). While the Board has been a defendant for more than 30 years in the school desegregation case of *Lemon v. Bossier Parish School Board*, C.A. No. 10,687 (W.D. La.), Judge Kessler noted that it still has not fulfilled its constitutional obligations to remedy segregation and

establish a unitary school district. App. 45a. *See Lemon v. Bossier Parish Sch. Bd.*, 240 F. Supp. 709 (W.D. La. 1965), *aff'd*, 370 F.2d 847 (5th Cir.), *cert. denied*, 388 U.S. 911 (1967).

More significantly, since 1980 the schools in Bossier Parish have become increasingly segregated by race. App. 45a ("the number of elementary schools with predominantly black enrollments has increased from one to four"); *id.* at 137a-38a (Stip. 240-42). While the District's total school enrollment is only 29% black, Bossier and Butler Elementary Schools, whose attendance areas are adjacent to one another in Bossier City, were 77% and 74% black in 1994, U.S. Exh. 84YY, compared to 39% and 44% black in 1980. U.S. Exh. 84KK. Likewise, both schools in Board Member Thomas Myrick's district in the northern portion of the Parish have become more than 75% black. J.A. 150 (Myrick).

The Board not only failed in its affirmative duty to desegregate, but also violated the specific terms of the outstanding consent decree in *Lemon*. App. 45a. For example, while the consent decree requires the Board to follow the *Singleton* standards and assign teachers to schools by race in approximately their proportion in the District as a whole, the Board has assigned black teachers disproportionately to predominantly black schools, such as Bossier and Butler Elementary Schools, contributing to their increasing racial identifiability. *See Singleton v. Jackson Mun. Separate Sch. Dist.*, 419 F.2d 1211, 1218 (5th Cir. 1969), *cert. denied sub nom. West Feliciana Parish Sch. Bd. v. Carter*, 396 U.S. 1032 (1970); App. 137a-38a (Stip. 239-40); J.A. 179 (Lewis) (admitting *deliberate* assignment of more than 70% black faculty to predominantly-black Butler Elementary School, despite the fact that district-wide black faculty had declined to less than 10%); Plaintiff's Exh. 14 at 4 (Lewis).

The Defendant-Intervenors repeatedly have tried—but unsuccessfully—to persuade the Board to address these

and other concerns about the treatment of black school children in Bossier Parish. *See* App. 96a-97a, 104a, 105a, 137a-38a (Stip. 95, 115, 117, 240). U.S. Exh. 32 at 50 (Board Minutes). For example, appellant George Price, the president of the local NAACP, repeatedly has asked the Board to attempt to hire more black teachers. App. 96a-97a, 104a, 105a (Stip. 95, 115, 117). Since 1980, the percentage of black teachers in the District, however, has fallen from 14% to less than 10%. App. 137a-38a (Stip. 240).

The Board has remained nonresponsive to all these concerns, despite a court-ordered obligation to maintain a bi-racial committee to "recommend to the School Board ways to attain and maintain a unitary system and to improve education in the parish." App. 103a-06a (Stip. 111-17). For decades, the Board ignored this requirement altogether. *Id.* at 103a-04a (Stip. 112). In 1993, the Board established a committee ostensibly to serve this function. *Id.* at 104a (Stip. 113). However, when black members of the committee raised not only problems, but potential solutions as well, the Board unilaterally disbanded the committee. *Id.* at 105a (Stip. 116). As Board members Thomas Myrick and Barry Musgrove explained in their direct testimony, Plaintiff's Exh. 15 at 15 (Musgrove); Plaintiff's Exh. 16 at 16 (Myrick), they did not want this committee getting into "policy" questions. *Id.* Judge Kessler found that as a result the Board "unilateral[ly] dismantl[ed] the Committee . . . in direct violation of a federal court order to address the concerns of the black community." App. 46a.

The effects of this longstanding discrimination continue to affect both the school children of Bossier Parish and its adult voters. "Black citizens of Bossier Parish suffer a markedly lower socioeconomic status than their white counterparts" that is "traceable to a legacy of racial discrimination affecting Bossier Parish's black citizens." *Id.* at 128a (Stip. 200); *see id.* at

127a-30a (Stip. 197-213). Judge Kessler alone reviewed these stipulated facts and their consequences, App. 52a-53a, and she concluded that "the depressed socioeconomic and educational levels" of blacks within Bossier Parish "make it hard for them to obtain necessary electoral information, organize, raise funds, campaign, register, and turn out to vote, and this in turn causes a depressed level of political participation for blacks within Bossier Parish." App. 52a.

This history of discrimination and its effects is important in this case for two reasons: it forms an important backdrop to the Board's redistricting decision, and it explains why black citizens were so concerned that a majority-minority district be fairly considered in that process.

C. The Redistricting Process

The Board's redistricting decision occurred in four stages: first was the prior adoption and preclearance of a plan by the governing body of the Parish, the Bossier Parish Police Jury ("Police Jury"); next was the Board's decision not to adopt the same plan approved by the Police Jury, but to formulate one of its own; third was the reversal of that decision and the hasty adoption of the Police Jury plan, despite its departures from the School Board's own redistricting criteria and notwithstanding rising support in the Parish for a majority-minority district; finally came the Board's series of shifting pretextual explanations for its decision, rationalizations that continued to change from the administrative preclearance process through the proceedings in the court below.

1. Police Jury Redistricting. Throughout the 1980s the Police Jury and the School Board had different election districts. App. 72a (Stip. 22). Although not required by law, both had 12 single-member districts during the 1980s. *Id.* Moreover, both had 12 majority-white districts. App. 2a-4a. Population changes

required each to reapportion after the 1990 Census. App. 3a-4a.

The Police Jury's redistricting efforts preceded the School Board's. During the Police Jury's redistricting process, the white Police Jurors and their cartographer Gary Joiner were "specifically aware that a contiguous black-majority district could be drawn both in northern Bossier Parish and in Bossier City." App. 76a (Stip. 36), 82a-83a (Stip. 53), 114a (Stip. 148). In fact, the parties stipulated that it was "obvious that a reasonably compact black-majority district could be drawn within Bossier City." App. 76a (Stip. 36). The Police Jurors also were aware that alternate configurations for a contiguous majority-black district in the northern part of the Parish could be created. App. 114a (Stip. 148).

However, they deliberately misled the public, *id.* at 83a (Stip. 54), the only black police juror, *id.* at 80a-81a (Stip. 47), and the Attorney General herself, *id.* at 87a (Stip. 65-66), by claiming that drawing any majority-black district was impossible. App. 3a. Despite these misrepresentations, some black community groups opposed the plan and specifically asked that their letter expressing concerns about it be included in the Police Jury's Section 5 submission. App. 3a; *id.* at 69a, 87a (Stip. 11, 65-66). Nevertheless, Joiner and the Police Jury did not include it. App. 87a (Stip. 65-66).

One of the School Board members, Thomas Myrick, participated in between five and ten private meetings about the Police Jury's redistricting with Joiner and white police jurors. App. 5a; *id.* at 81a, 93a-94a (Stip. 48, 85).[3] Mr. Myrick lives in an area that the

---

[3] Despite the Board's stipulations about Myrick's meetings with Joiner and the Police Jurors, App. 81a, 93a-94a (Stip. 48, 85), and Joiner's live testimony about "probably half a dozen" such meetings, J.A. 161-64 (Joiner), Myrick denied on the witness

parties stipulated "would likely be included in any majority-black district to be drawn in the northern part of Bossier Parish." *Id.* at 81a (Stip. 48). Myrick was concerned about his district, J.A. 162-63 (Joiner), and indicated to Joiner in these meetings that he did not want a majority-black district. *Id.* at 163.

In April 1991, the Police Jury adopted a reapportionment plan with all majority-white districts. App. 3a, 68a (Stip. 11). As the majority found, Myrick later would be the first to recommend this plan to his fellow Board members. App. 5a. He also took the lead in the Board's redistricting process, and several other Board members deferred to him. *See, e.g.*, U.S. Exhs. 95 at 34-35 (Jackson); 100 at 71 (Rodgers); 86 at 37-38 (Barerra).

On May 28, 1991, the Police Jury submitted its redistricting plan to the Attorney General seeking preclearance under Section 5. As noted, the Police Jury withheld from its submission the complaints of black citizens and the information revealing that reasonably compact majority-black districts could be created. App. 68a-69a (Stip. 11). On July 29, 1991, based on this incomplete information, the Attorney General precleared the plan. *Id.* at 3a, 68a-69a (Stip. 11).

The Police Jury's 1991 redistricting plan cut across many of the precinct lines established in the 1980s to facilitate elections under the Parish's various election plans. App. 88a (Stip. 70). Indeed, the new plan resulted in the creation of 20 additional precincts (for a total Parish-wide of 56). *Id.;* D-I Exh. G ¶ 36 (Cooper). Police juries are empowered by state statute to establish such new precincts. App. 70a (Stip. 15).

The Police Jury's plan not only diluted minority voting strength, but it also drew precinct lines that severely

---

stand that any of them took place. J.A. 150-51, 156-57 (Myrick). The majority rejected Myrick's testimony. App. 5a.

fragmented black communities: only two of the Police Jury's 56 precincts are majority black, and they contain only 3,000 of the Parish's 86,000 people. Tr. I at 177-78 (Joiner).

2. The School Board's Initial Decision. School boards in Louisiana do not possess independent authority to establish or change precinct lines themselves; if a school board and police jury have the same number of election districts, the board's election districts must be composed of whole precincts established by its police jury. App. 71a (Stip. 21). Nevertheless, school boards are not bound to employ their police juries' redistricting plans or to use their original election precincts. Instead, in practice school boards have three options: first, they could fashion election plans different from those adopted by their police juries, but with the same number of districts and using the post-1990 precincts established by their police juries; second, they could choose election plans with a different number of election districts than their police juries, La. R.S. 17:71.3E; or third, they could develop election plans independently and then have their police juries create new precincts to accommodate both election plans. App. 72a (Stip. 22); *see also* J.A. 136-43(Creed).

The undisputed evidence showed and the majority found that the third option was quite common. App. 6a-7a. Moreover, there was no evidence showing that any police jury had ever denied a school board's request to alter precinct lines to accommodate a school board's favored redistricting plan.

As the majority found and the parties stipulated, the Board in this case entered the redistricting process well aware that if it did not adopt the Police Jury's plan it likely would need to have new precincts established. App. 29a; *id.* at 95a (Stip. 89). While, in October of 1990, the Board had directed its superintendent to contact the Police Jury about jointly developing an election plan, the Police Jury had not been interested,

App. 93a (Stip. 83, 84), and the Board hoped that it "could derive [its] own plan." Tr. I. at 44 (Musgrove).

Moreover, when the Board began its redistricting process in earnest it envisioned this prospect and hired Gary Joiner to perform 200 to 250 hours of work, far more than would be necessary simply to recreate the Police Jury plan. *Id.* at 94a (Stip. 86-87). After the Police Jury plan received preclearance in the summer of 1991, however, Thomas Myrick suggested that the Board adopt the Police Jury plan. App. 5a. Nevertheless, on September 5, 1991, the School Board decided not to adopt the Police Jury plan. *Id.* As Judge Kessler found, the Board rejected the already-precleared Police Jury plan "largely because it would pit incumbents against each other." App. 47a. *See also* App. 5a (majority's finding that "[n]o action was taken on Myrick's proposal"); *id.* at 8a (majority's finding that plan "pits two pairs of incumbents against each other, leaving two districts with no incumbents").

As a result, over the course of the next year, School Board members considered a number of different redistricting options, *id.* at 47a, including adjusting their 1980 plan, U.S. Exh. 98 at 18 (Hensley), or developing a plan with five, seven or nine districts, Tr. I at 44 (Musgrove). The Board's cartographer Gary Joiner met privately with the members and demonstrated different possibilities to them on his computer. App. 47a; App. 97a (Stip. 96). These meetings were not open to the public, nor were there any recorded minutes or published notices of the meetings. *Id.* at 47a. According to Joiner, moreover, all records of the alternatives considered by the Board disappeared in a series of computer disasters. J.A. 165-66 (Joiner).

3. The School Board's Reversal of its Initial Decision and Refusal to Consider Proposals from the Black Community. Meanwhile, as Judge Kessler described it, "[w]hile the School Board was meeting and planning in private, the black community was trying,

unsuccessfully, to participate in public." App. 47a. On March 25, 1992, George Price wrote to the Board requesting that a coalition of black community groups be included in the redistricting process. App. 5a; App. 47a; *id.* at 96a (Stip. 93). The Board neither responded to this letter nor took any action to include the NAACP, other black civic groups, or Mr. Price in the redistricting effort. *Id.* In August 1992, Mr. Price sent another letter asking to be involved. J.A. 126-27. Again, the Board made no response. App. 47a.

Frustrated by the Board's unresponsiveness, Price contacted the NAACP Redistricting Project in Baltimore, Maryland and asked it to evaluate the public assertions that no single-member districts could be drawn in Bossier Parish without a white majority. App. 47a-48a; App. 98a (Stip. 98). In response, the Project developed a partial plan for Price to present to the School Board that consisted of two hypothetical majority-black districts. *Id.* at 48a. The majority below found that when Price provided this information to the Board he was told that it would not even be considered because it did not contain an election plan for the entire Parish. App. 6a. Price therefore went back to the Project and had a complete 12-district illustrative plan drawn up, one that included ten majority-white districts. *Id.*

Nevertheless, when Price presented this completed plan at a public Board meeting on September 3, 1992, the Board summarily dismissed it, claiming that without a larger map the information could not be considered. App. 98a-99a (Stip. 100). Significantly, the parties stipulated that this plan demonstrated that "two contiguous districts with a black voting age population majority can be drawn within Bossier Parish for the Bossier Parish School Board." *Id.* at 113a (Stip. 143).

The majority found that Mr. Price also was told at the time that because the plan appeared to split precincts it could not be considered. App. 6a; *id.* at 48a, 98a-100a (Stip. 100-02). Yet, until that time, as the majority

expressly recognized, the Board had been actively considering alternatives to the Police Jury plan, all of which likely would have split precincts. *See* App. 29a; *id.* at 72a (Stip. 23); J.A. 168 (Joiner). The Board furthermore knew at the time that it was legal and feasible to draw districts that split precincts. App. 7a (quoting *id.* at 72a (Stip. 23) (Board "free to request precinct changes from the Police Jury")); *id.* at 72a, 99a-100a (Stip. 22, 102).

Despite having received an illustrative plan demonstrating the concentration of black populations in the Parish and the feasibility of drawing compact majority-minority districts, the Board did not ask its cartographer to do any further study. App. 48a. App. 100a-01a (Stip. 106). Neither did it attempt to ascertain how many of the Police Jury's newly established precincts would be split by the NAACP plan or any other plan including a majority-black district. *See* U.S. Exh. 102 ¶17 (Blunt); Tr. I at 164-65 (Joiner).[4] Likewise, the Board made no effort to ascertain the extent of any costs that might be associated with a plan that split precincts. *Id.; see also* J.A. 170-75 (Joiner).

At the Board's next regular meeting, on September 17, 1992, Mr. Price again asked the Board to consider the implications of the NAACP's illustrative plan. App. 48a, 100a-01a (Stip. 106). The Board refused, immediately passing a motion of intent to adopt the

[4] The Board's cartographer later conceded that a majority-black district in Bossier City would require only 14 precinct splits, and a plan with two majority-black districts would require 27. Tr. I at 152 (Joiner). Unrebutted testimony also established that the newly created precincts required for a plan with two majority-black districts could be consolidated with existing precincts to reduce the total number of precincts from the current 56 to 46. D-I. Exh. G ¶ 36 (Cooper).

Police Jury plan, which it had previously found unsatisfactory. *Id.* at 100a (Stip. 106).

Around this time, a narrow majority of the Board appointed Jerome Blunt as the first black person ever to serve on the Board. App. 7a. Blunt was appointed to a six-month term representing an 89% white district. *Id.* He was sworn in at the September 17, 1992, meeting but was defeated by a white candidate in the special election six months later. *Id.* As Judge Kessler found:

> Certainly, Board members knew that adopting the Police Jury plan would ignite controversy in the black community. And on the very night of that decision, the School Board appointed a black to fill a seat that they knew he would be unable to hold, hoping to quell the political furor over adoption of the Police Jury plan. [App. 54a n.9.]

On September 18, 1992, Mr. Price again wrote the Board, this time joined by a number of other community leaders, and asked it to "give the plan submitted by the NAACP [its] utmost consideration and . . . use it as a foundation" to create a plan that included majority-black districts. J.A. 128-29. The Board again did not respond.

At the legally required public hearing concerning the Board's proposed redistricting plan, many Bossier Parish voters continued to express their concerns about the Board's precipitous embrace of the Police Jury plan. An overflow crowd attended the hearing, which was held on September 24, 1992. App. 7a-8a, 48a. Fifteen people spoke against the School Board's proposed plan, most of whom objected because it would dilute minority voting strength. App. 8a; *id.* at 101a (Stip. 108). Significantly, *not one* person spoke in favor of the plan. *Id.* Furthermore, more than 500 Bossier Parish citizens presented the Board with a petition, asking it to consider an alternative redistricting plan. *Id.* at 7a-8a. This was the largest petition presented to the Board on any subject in years. App. 101a (Stip. 108).

At the September 24 hearing, Mr. Price explained in detail why the Board's alleged concerns about precinct-splitting did not justify the adoption of a plan like the Police Jury's that diluted minority voting strength. J.A. 122 (Price); J.A. 130-32; Tr. I at 52 (Myrick). He also pointed out that Mr. Joiner's public statements on behalf of the Board—that state precinct-splitting limitations prevented it from considering the NAACP's illustrative plan or any plan with a majority-black district—were completely false. *Id.*

Neither at this hearing nor at its other meetings did the Board members explain on the record any reasons for their support of the Police Jury plan. *See* U.S. Exhs. 7-36. Instead, the Board's minutes reflect only an unexplained retreat to the Police Jury plan that it had rejected a year earlier. U.S. Exhs. 32, 34, 36. Thus, no perceived strengths of the Police Jury plan are discussed or documented anywhere on the public record of the Board's action.

In contrast, both the majority and the dissent below agreed that the Police Jury plan had several significant flaws from the Board's own perspective. App. 8a; *id.* at 50a. Indeed, the plan violated many of the redistricting criteria that Board members had relied upon until the NAACP's demonstration that election plans with majority-black districts were possible. For example, the Police Jury plan pitted School Board incumbents against one another in two districts. *Id.* at 8a. Likewise, as the majority recognized, the Police Jury plan distributed schools unevenly, with some election districts containing no schools and other districts containing several. *Id.* at 8a; *see also* 72a-73a, 112a (Stip. 24, 141).

The plan also contained one district that included "almost half of the geographic area in the Parish," App. 50a, several others that were not compact according to the Board's own cartographer, Tr. I at 175 (Joiner), and one district that was not contiguous. D-I Exh. G ¶32 (Cooper). The plan also violated a state law requirement

that no election districts deviate from the one-person, one-vote ideal by more than 5%. *Id.* ¶31; La. R.S. 17:71.3 E(2)(a) and E(3)(a). Judge Kessler therefore concluded that "the Board's plan plainly violates a whole number of redistricting principles." App. 51a.

Despite these obvious substantive problems with the Police Jury plan, App. 50a-51a, the one-sided input from Bossier citizens concerned about its adoption, App. 7a-8a, and the fact that the Board was under no time pressure to decide the issue, App. 4a, the Board voted, at its very next meeting on October 1, 1992, to adopt the plan. App. 49a. As with the meetings of September 3 and September 17, 1992, the minutes of this meeting reflect virtually no substantive consideration of the plan. *See* U.S. Exhs. 7-36. While Jerome Blunt encouraged the other Board members to explore the issues being raised by the black community, the Board refused. J.A. 88-89 (Blunt); U.S. Exh. 36 at 67. Thomas Myrick, in the one verbatim statement concerning redistricting recorded in two years of Board minutes, told Blunt that this was not a question of "black and white" but of "majority rule." U.S. Exh. 36 at 67. Mr. Blunt abstained from the vote in protest, *id*; J.A. 88-89, but the white majority present voted unanimously for the Police Jury plan. App. 8a.

In these circumstances, as Judge Kessler found, "[f]aced with growing frustration of the black community at being excluded from the electoral process, the only way for the School Board to ensure that no majority-black districts would be created was to quickly adopt the Police Jury plan and put the issue to rest." App. 49a-50a. The majority similarly concluded that "[w]hen . . . the redistricting process began to cause agitation within the black community, . . . the Police Jury plan became, as Board member Thomas Myrick described it, 'expedient.'" App. 28a.

What Myrick described on the stand as "expediency," he and other Board members were more candid about in

private. Myrick, for example, told two black voters from northern Bossier Parish that he would not "let [them] take his seat away from him." App. 6a n.4. J.A. 123-24 (Price); D-I Exh. E ¶ 19 (Harry). The Board's own cartographer similarly testified that Myrick had indicated to him that he wanted to avoid the creation of any majority-black districts. J.A. 163-64 (Joiner). Board member Henry Burns told another black voter that other Board members "oppose the idea" of "black representation on the Board." App. 5a-6a n.4. J.A. 93 (Davis). And Barry Musgrove, another Board member told George Price that "there was nothing more he could do . . . [on the redistricting issue] because the Board was 'hostile' toward the idea of a black majority district." App. 6a n.4; J.A. 123 (Price).

As a result of this hostility, the Board adopted a plan that it had previously rejected and that diluted minority voting strength. Because, as noted, voting in Bossier Parish is racially polarized, App. 122a-27a (Stip. 181-96), the foreseeable impact of the Board's plan was to reduce the chances of black voters being able to elect candidates of their choice. App. 41a. According to the Board's own consultant, Gary Joiner, the adopted plan unnecessarily fragmented or "fractur[ed]" predominantly black residential areas. *Id.* at 111a (Stip. 137). Joiner defined fracturing as "taking a cohesive minority population which exhibits traits of commonality (communities of interest) and purposefully splitting it among adjoining, often white majority districts." Report of Gary D. Joiner on Behalf of Plaintiff (October 20, 1994). Dr. Castille, an opinion witness called by the Attorney General, confirmed Joiner's admission that, in the Bossier City area surrounding the two 75%-plus black elementary schools, Bossier and Butler, the Board's plan "effectively divided well-established neighborhoods that are predominantly black." J.A. 103-04 (Castille); *id.* at 102-03 (describing similar "fracturing" in Benton area in the northern portion of the Parish).

The Board members indisputably knew about these black neighborhoods and intentionally kept them together in drawing school attendance areas. U.S. Exhs. 86-101. Indeed, virtually every Board member sought to justify schools being more than 75% black by referring to predominantly black neighborhoods surrounding the schools.[5] Yet their election plan split neighborhoods around predominantly black schools. Moreover, the Board stipulated to facts showing that its plan does "not respect communities of interest in Bossier Parish." App. 50-51a (citing Stip. 135-57). Judge Kessler, who alone among the panel evaluated the effect of the plan and the historical background of the Board's decision, found that the Board split these black communities in drawing election districts because it wanted to impede black voters—who share serious concerns about the treatment of black children in the public schools—from electing candidates of their choice. App. 46a.

4. Post-hoc Rationalizations for the Board's Decision. In subsequent efforts to justify the unexplained reversal of its initial decision and its refusal to consider alternatives from the black community, the Board offered the Attorney General and the District Court a series of pretextual explanations, including several which the majority itself found "clearly were not real reasons." App. 27a n.15. For example, the School Board argued that it adopted the Police Jury plan (on October 1, 1992) to comply with *Shaw v. Reno,* 113 S. Ct. 2816 (1993) (decided June 28, 1993) ("*Shaw I*"), even though *Shaw I* was decided nine months after the Board adopted its plan. *Id.*

---

[5] *See* J.A. 68 (Barerra); J.A. 69 (Blaylock); J.A. 70-71 (Burns); J.A. 72 (Gray); J.A. 73 (Jackson); J.A. 74-75 (Harvey); J.A. 76 (Hensley); J.A. 78-80 (Hudson); J.A. 81 (Rodgers); J.A. 83 (Sullivan).

The School Board also reiterated its claim that it could not adopt a plan with fewer than 12 majority-white districts because any such plan would require precinct-splitting, which it erroneously claimed violates state law. App. 56a. The majority found, however, that when "the School Board began the redistricting process, it likely anticipated the necessity of splitting some precincts." App. 29a. Indeed, as Judge Kessler found, "[i]t was only *after* the black community presented its alternative plan that the School Board proffered the 'no precinct-splitting' rationale." App. 56a (emphasis in original). Furthermore, as earlier noted, while the Board itself may not split precincts, police juries have the authority to establish and modify precinct lines, and many do so when requested by a school board. *Id.* at 69a-73a, 85a-86a (Stip. 13-25, 60-61). Here, as the majority found, the School Board never made such a request. App. 7a. Finally, the Board never expressed any concern about the fact that the Police Jury plan itself violated state law in other ways because its districts were not all contiguous and its deviation exceeded plus-or-minus 5%. *See* D-I Exh. G ¶¶ 31-32.

Nor did the School Board voice any concern in its initial submission to the Attorney General about a high number of precinct splits causing higher election costs, as it subsequently claimed. App. 57a. In fact, the Board never even estimated the cost of splitting precincts before it voted to adopt the Police Jury plan. *Id.* Obviously, "cost" did not actually motivate the School Board's decision at the time it was made. *Id.*

Bossier's final proffered justification for adopting the Police Jury plan was that it guaranteed preclearance; that is, the Attorney General would approve the School Board's plan because it was identical to the Police Jury plan which already had been precleared. App. 57a-58a. However, "guaranteed preclearance" was not the School Board's objective; if it had been, the Board would not have waited until October 1, 1992—almost 14 months

after the Police Jury plan was precleared—to adopt it. *Id.* Moreover, adopting a plan with one or more majority-black districts certainly would not have made preclearance *less likely*; quite the contrary, given the Board's history and the Attorney General's position, the Board could not reasonably have believed that a plan that would both honor traditional districting principles and improve the opportunity of black citizens to participate in the political process would have had *less chance* of preclearance than the Police Jury plan.

III. THE PROCEEDINGS BELOW

A. The Attorney General's Denial of Preclearance

While the Board had acted precipitously in approving its redistricting plan on October 1, 1992, it did not submit its plan to the Department of Justice for preclearance until January 4, 1993. App. 103a (Stip. 110). After requesting additional information, the Attorney General interposed a timely objection to Bossier's plan. *Id.* at 154a, 106a-07a (Stip. 118-19).

The Attorney General noted that new information had made clear that it was possible to draw one or more majority-black districts in Bossier Parish. App. 154a. In its Section 5 submission, the Board's only rationale for refusing to consider this possibility was its claim that drawing a majority-black district would split precincts. *Id.* The Attorney General, however, pointed out that there was no evidence that the Board had ever requested that the Police Jury realign precincts. *Id.* As the majority found, the Board never attempted this option. App. 7a.

The Board then moved for reconsideration. But rather than submitting any additional analyses by its consultant or requesting a precinct realignment from the Police Jury, the Board proffered new pretextual justifications for its plan, including the claim discussed above—which the majority below found to be obviously false, App. 27a-28a n.15—that it had been attempting to avoid racial

gerrymandering under *Shaw I*. The Attorney General denied the request for reconsideration on December 20, 1993. *Id.* at 159a, 108a (Stip. 125).

B. The Declaratory Judgment Action

On July 8, 1994, Bossier filed this action against the Attorney General in D.C. District Court. A group of black voters in Bossier Parish, George Price, *et al.*, intervened as defendants in support of the Attorney General. These Defendant-Intervenors suggested to the three-judge court that it should decide this case based solely on the issue of discriminatory purpose under Section 5.

The Attorney General agreed that the evidence clearly established discriminatory purpose, but also argued that much of the same evidence established a clear violation of Section 2 and that such a violation constitutes independent grounds for denying preclearance. Rather than face the costs of defending a Section 2 lawsuit, Bossier itself stipulated that "[s]ection 5 preclearance . . . must be denied if the plan violates Section 2." App. 11a n.7; *id.* at 144a (Stip. 257). The court below, however, rejected this invitation from the parties and ruled that a Section 2 violation is not a valid ground for denying Section 5 preclearance. *Id.* at 11a-24a.

The majority went much further, however, ruling that no "*evidence* of a section 2 violation" may be used to establish "discriminatory purpose under section 5." App. 23a (emphasis added). Ignoring the fact that much of the same evidence used in establishing a Section 2 violation is probative of discriminatory purpose under Section 5, and ignoring *Arlington Heights* and other precedents of this Court, the majority flatly held that it would "not permit *section 2 evidence* to prove discriminatory purpose." *Id.* at 24a (emphasis added).

In addition, misapplying this Court's decision in *Miller v. Johnson*, the majority refused to consider the adverse effect of the plan on black voters as evidence of

discriminatory purpose. Instead, the majority held that "the adoption of one nonretrogressive plan [that contains no majority-black districts] rather than another nonretrogressive plan that contains [some] majority-black districts cannot by itself give rise to the inference of discriminatory purpose." App. 35a. As a result of these two legal errors, the majority excluded from its consideration much of the evidence of discriminatory purpose in this case.

The majority not only ignored probative evidence, it also shifted the burden of proof away from Bossier to the Attorney General by offering its own speculation about the meaning of prior statements by Board members—statements which revealed the Board's discriminatory purpose and as to which the Board itself had offered no explanation. *See id.* at 30a-32a.

Finally, the majority concluded that the School Board had two nondiscriminatory motives: "guaranteed preclearance" and "easy implementation (because no precinct lines would need redrawing)." App. 27a-28a. While the dissent effectively exposes these two rationales as pretextual, App. 56a-59a, the majority also erred by holding that proof of some legitimate motives was sufficient to meet the Board's burden of proof. The majority thus ignored the evidence of record that the Board's action was motivated at least in part by other purposes that were discriminatory such as: diluting black voting strength; continuing to avoid the need to address the concerns of its black patrons about the operation of Bossier's public schools; and protecting Board member Thomas Myrick's seat.

Judge Kessler, alone among the panel, considered the entire "extensive record" below and applied the *Arlington Heights* standard. She concluded that Bossier had "woefully failed to satisfy" its burden of proving that it acted solely with "legitimate, nondiscriminatory motives." App. 59a, 37a (quoting *New York v. United States*, 874 F. Supp. 394, 400 (D.D.C. 1994)). Indeed,

Judge Kessler, looking at all the evidence, found that it "demonstrates conclusively," indeed "overwhelmingly," that "racial purpose fueled the School Board's decision." *Id.* at 39a, 63a.

SUMMARY OF THE ARGUMENT

This Court's precedents require a thorough and sensitive inquiry into a wide range of evidence to determine whether a racially discriminatory purpose was a motivating factor in the redistricting decision of a jurisdiction subject to Section 5. Indeed, the Court's most recent cases also make quite clear that the Court will not accept at face value a state's explanations for apparent discriminatory treatment but will carefully probe those explanations to determine whether a prohibited discriminatory purpose in fact animated the state's actions.

The majority below did not conduct the careful probing required by this Court; the majority completely failed even to undertake the inquiry long required by *Arlington Heights* and held instead that much of the evidence of discriminatory intent in this case could not be considered *at all* because it also would be relevant to a discrimination claim under Section 2 of the Voting Rights Act. This ruling is contrary to this Court's precedents and profoundly illogical. Evidence of an action's discriminatory effect on black voters is clearly relevant to the question of whether a government body acted with discriminatory purpose. Likewise, an ongoing history of intentional discrimination against the same group is at least probative of the government actor's motivation. As this Court recognized in *Arlington Heights* and *Rogers v. Lodge*, 458 U.S. 613 (1982), a variety of factors bearing on the context of an official decision may reveal its intent. By refusing even to consider such evidence of discriminatory purpose, which it dubbed "Section 2 evidence," the majority started with the assumption that the Board "did nothing bad" and only then asked if "it

did so with a non-bad motive." App. 25a n.13. This clear legal error compels reversal.

The majority also committed three other legal errors in assessing the Board's discriminatory purpose. First, the majority erroneously held that evidence of the discriminatory impact of an election plan with no majority-black districts may not be considered if the plan is not retrogressive. Second, the majority improperly supplied its own rebuttal to Board-member statements indicating discriminatory intent. And third, the majority incorrectly held that the mere presence of some legitimate, nondiscriminatory reasons for the Board's decision is sufficient in and of itself to satisfy Section 5's discriminatory purpose prong. All of this is contrary to this Court's decisions.

Moreover, even if the Board had some legitimate, nondiscriminatory reasons for its decision—which it did not—that would be no defense because discriminatory purposes also motivated its action. Here, the majority's own findings, along with the stipulated and unrebutted evidence that it erroneously failed to consider, show that racial discrimination *was* a factor. Indeed, as Judge Kessler found, the undisputed facts "demonstrate overwhelmingly" that discriminatory purposes "fueled" the Board's decision. App. 63a, 39a.

The court below also incorrectly ruled on a second issue—whether a violation of Section 2 constitutes an independent basis for denying preclearance under Section 5. Because applying the proper legal standard to this case leaves no doubt that the Board acted at least in part based upon discriminatory purposes, the Court need not reach this second issue. If it does reach the issue, however, the legislative history of the Voting Rights Act makes clear that Congress intended a violation of Section 2 to afford an independent basis for denying preclearance. The contrary interpretation offered by the court below would require the Attorney General and the D.C. District Court to preclear voting changes that they

know violate federal law. This Court should not conclude that Congress intended such a result.

ARGUMENT

I. THE BOSSIER PARISH SCHOOL BOARD'S REDISTRICTING PLAN VIOLATES SECTION 5 OF THE VOTING RIGHTS ACT BECAUSE IT WAS ADOPTED WITH A DISCRIMINATORY PURPOSE

The School Board bore the burden of establishing that its redistricting plan "does not have the purpose . . . of denying or abridging the right to vote." 42 U.S.C. § 1973c; *Rome v. United States*, 446 U.S. 156, 183 n.18 (1980) ("Under § 5, the [Board] bears the burden of proving lack of discriminatory purpose. . . ."). As the majority held, if "the evidence is equally convincing on either side, the School Board—bearing the risk of nonpersuasion—must lose." App. 26a (citing *McCain v. Lybrand*, 465 U.S. 236, 257 (1984)). When the entirety of the "extensive record" is considered under this Court's *Arlington Heights* standard, as only Judge Kessler did below, "the evidence is far from being equally convincing on either side." App 38a-39a. Rather, "[t]he evidence in this case demonstrates overwhelmingly that the School Board's decision to adopt the Police Jury redistricting plan was motivated by discriminatory purpose." App. 63a.

The majority reached a contrary decision because it made four errors of law: (1) it refused to consider evidence probative of discriminatory purpose solely because this evidence would also have been probative of a Section 2 violation; (2) it assumed that a nonretrogressive plan could not be adopted with discriminatory purpose; (3) it undertook the burden of explaining away damaging evidence that the Board itself had not explained; and (4) it supposed that so long as some nondiscriminatory reasons for the Board's plan could be identified, other discriminatory reasons could be ignored. All of this is wrong as a matter of law. And all

of it is inconsistent with the hard look this Court has given to a state's alleged justifications for redistricting decisions in *Shaw II*, *Vera* and *Miller*, and to a state's explanation for apparently discriminatory treatment of gay people and women in *Romer v. Evans*, 116 S. Ct. 1620 (1996), and *United States v. Virginia*, Nos. 94-1941 and 94-2107, 1996 WL 345786 (U.S. June 26, 1996).

Yet here, where the discrimination at issue was the kind that historically has received this Court's strictest scrutiny—racial discrimination against black people—the majority below deferred wholesale to the School Board, ignoring critical evidence, creating explanations for damaging testimony by elected officials, and turning a blind eye to what the evidence overwhelmingly showed: The Board acted in part to keep blacks voters from being able to elect their candidates of choice. This Court should not condone such action. The majority's legal errors should be corrected and, when they are, only one legal conclusion is possible: Racial discrimination was present, and preclearance therefore should have been denied.

A. The Majority Erred in Refusing to Consider Evidence of Discriminatory Purpose Under *Arlington Heights* Solely Because That Evidence Also Would Be Relevant in a Section 2 Case

The majority's most serious error was its determination that any evidence relevant to a Section 2 claim could not be used to prove discriminatory purpose under Section 5.[6] This unprecedented and illogical ruling departs from the controlling precedents of this Court.

---

[6] App. 24a ("we will not permit section 2 evidence to prove discriminatory purpose under section 5"); *id.* at 23a ("*Miller* forecloses the permitting of section 2 evidence in a section 5 case"); *id.* (refusing to "consider evidence of a section 2 violation as evidence of discriminatory purpose under section 5").

The proper standard for determining the existence of a racially discriminatory purpose in a Section 5 action, as the dissent below recognized, is the constitutional standard set forth in *Arlington Heights*. App. 39a, 61a-62a. In that case, this Court made clear that "[d]etermining whether invidious discriminatory purpose was a motivating factor demands a sensitive inquiry into such circumstantial and direct evidence of intent as may be available." 429 U.S. at 266. The Court outlined, "without purporting to be exhaustive," relevant factors including:

> (1) "[t]he impact of the official action whether it 'bears more heavily on one race than another,'"
> (2) "[t]he historical background of the decision";
> (3) "[t]he specific sequence of events leading up [to] the challenged decision [including] . . . [d]epartures from the normal procedural sequence";
> (4) "[s]ubstantive departures . . . [from] factors usually considered important"; and
> (5) "administrative history" and other "contemporary statements by members of the decisionmaking body."
> [*Id.* at 266-68 (citations omitted).]

The Attorney General and the Defendant-Intervenors offered unrebutted evidence of discrimination in each of these areas and more, much of it in the form of stipulations. App. 66a-153a (Stip. 1-285). Yet the majority below refused to consider any evidence of the first two *Arlington Heights* factors—the impact of the official action and its historical background—because this evidence also would be relevant in a Section 2 case. This was plainly error under this Court's cases, and it caused the majority to exclude from consideration critical evidence this Court repeatedly has found important in discerning the presence of discrimination.

For example, in *Rogers v. Lodge*, 458 U.S. 613 (1982), this Court held that lower courts must look to "the totality of the relevant facts" to determine whether a challenged action was taken with an unconstitutional

discriminatory purpose. *Id.* at 618. In *Rogers*, this Court, invoking *Arlington Heights*, reaffirmed its conclusion in *Mobile v. Bolden*, 446 U.S. 55 (1980), that the presence of factors set forth in *Zimmer v. McKeithen*, 485 F.2d 1297 (5th Cir. 1973), *aff'd sub nom. East Carroll Parish School Board v. Marshall*, 424 U.S. 636 (1976), "'may afford some evidence of discriminatory'" vote dilution under the Fourteenth Amendment. *Rogers*, 458 U.S. at 620 (quoting *Bolden*, 446 U.S. at 73). Here, the majority refused even to consider the undisputed evidence with respect to the factors found relevant to a constitutional violation in *Rogers*.[7]

This was clearly wrong under the Court's voting rights decisions. As the Court reiterated just last Term, under Section 5's "purpose" prong a redistricting plan should not be precleared if "'the new apportionment itself so discriminates on the basis of race or color as to violate the Constitution.'" *Shaw II*, 1996 WL 315870, at *7 (quoting *Miller*, 115 S.Ct. at 2492) (other citations omitted).

In *Miller* as well, this Court repeatedly cited the application of *Arlington Heights* to Section 5 voting rights cases, 115 S.Ct. at 2483, 2487, 2489, and expressly acknowledged previous decisions in which the Court conducted or approved a *complete* inquiry into the presence of discriminatory purpose. *See, e.g., City of Pleasant Grove v. United States*, 479 U.S. 462 (1987);

---

[7] Thus, the majority disregarded the evidence of the School Board's continuing segregation of students and teachers and its non-responsiveness to its black patrons, in direct contravention of a federal court order. App. 103a-06a (Stip. 111-17). The majority also failed to address undisputed evidence concerning racial bloc voting, App. 122a-27a (Stip. 181-95), the lack of electoral success of blacks, App. 115a-16a (Stip. 153-57), and socioeconomic disparities between whites and blacks, App. 128a-30a (Stip. 198-202, 206-12), all of which were recognized as relevant by this Court in *Rogers*. 458 U.S. at 623-26.

City of Richmond v. United States, 422 U.S. 358 (1975).[8] Even those members of the *Pleasant Grove* Court who dissented from the Court's conclusion that the jurisdiction had acted with a discriminatory purpose recognized that the appropriate standard in the Section 5 context was the intent analysis articulated in *Arlington Heights* and *Washington v. Davis*, 426 U.S. 229 (1976). 479 U.S. at 479 (Powell, J., dissenting).

The majority's rationale for excluding evidence plainly relevant to discriminatory intent under *Arlington Heights* was its view that Section 2 should not be "incorporated" into Section 5, *i.e.*, a violation of Section 2 should not be grounds for denying preclearance under Section 5. App. 23a-24a. But even if this were correct—and we submit it is not (*see infra* pp. 43-45)—it could not justify what the majority has done here.

Obviously, certain kinds of evidence showing voting rights violations would be relevant to both Section 2 *and* Section 5, and the mere fact that evidence of discriminatory purpose under Section 5 could also be relevant to a vote dilution claim under Section 2 can hardly make that evidence inadmissible in a Section 5 claim. It may be doubtful, as this Court recently observed in *Shaw II*, "that a showing of discriminatory effect under § 2, *alone*, could support a claim of discriminatory purpose under § 5," 1996 WL 315870, at *8 n.6 (emphasis added), but this observation merely confirms that such a showing is certainly *relevant* in a Section 5 proceeding.

---

[8] This Court also has affirmed other three-judge district court decisions endorsing the application of *Arlington Heights* to Section 5's purpose prong. *See, e.g., Busbee v. Smith*, 549 F. Supp. 494, 516-17 (D.D.C. 1982), *aff'd*, 459 U.S. 1166 (1983); *City of Port Arthur v. United States*, 517 F. Supp. 987, 1019 (D.D.C. 1981), *aff'd*, 459 U.S. 159 (1982).

Not only is there no support whatever in Section 5 itself or in this Court's cases for excluding relevant circumstantial evidence merely because it would also be pertinent to a Section 2 claim, but the majority's approach would threaten to undermine completely enforcement of Section 5's discriminatory purpose prong. This is because the majority's rule would effectively insulate from Section 5 review any discriminatory state purpose not openly acknowledged on the public record. In cases of alleged discrimination against minorities, "[o]rdinarily, *only* circumstantial evidence [of the type disregarded by the majority below] is available to establish [discriminatory] intent." *Diaz v. San Jose Unified Sch. Dist.*, 733 F.2d 660, 662 (9th Cir. 1984) (emphasis added). Indeed, the type of official public statements that provide "direct evidence of the legislature's racial motivations" in racial gerrymandering cases challenging majority-minority districts, *see, e.g., Vera*, 1996 WL 315857, at *6, are unlikely ever to be present in cases of intentional minority vote dilution or racially gerrymandered majority-white districts, because jurisdictions like Bossier are obviously loath to admit publicly such unlawful racial intent.

As a result, excluding all evidence of the discriminatory impact and context of voting changes would, as Judge Kessler recognized, insulate from Section 5 review even "thinly-veiled effort[s] to deny black voters a meaningful opportunity" for participation in the political process. App. 64a. The majority's rule thus would effectively eliminate the discriminatory purpose prong from Section 5. Congress plainly did not intend such a result.

B. The Majority Erred in Concluding That Discriminatory Purpose Cannot Infect a Nonretrogressive Plan

The majority not only refused to consider "Section 2 evidence" in determining discriminatory intent under Section 5, it also held that retrogression is the *only*

discriminatory impact on minority voters that may support an inference of discriminatory purpose. App. 35a, 25a n.13. This too was error and misreads the case upon which the majority relied, *Miller v. Johnson*.

The parties agreed that Bossier's plan was not retrogressive, and, therefore, the proof below focused on discriminatory purpose. As Judge Kessler recognized, under this Court's precedents "an important starting point" in analyzing the government's purpose is the "impact of an official action—whether it 'bears more heavily on one race than another.'" App. 40a (quoting *Arlington Heights*, 429 U.S. at 266 (quoting *Washington v. Davis*, 426 U.S. at 242)). "[A]ctions having foreseeable and anticipated disparate impact are relevant evidence to prove the ultimate fact, forbidden purpose." *Columbus Bd. of Educ. v. Penick*, 443 U.S. 449, 464 (1979).

Miller v. Johnson is not to the contrary. It is true that in *Miller* the Court quoted *Beer v. United States*, 425 U.S. 130 (1976), for the proposition that "'[t]he purpose of § 5 has always been to insure that no voting-procedure changes would be made that would lead to a retrogression in the position of racial minorities with respect to their effective exercise of the electoral franchise.'" 115 S. Ct. at 2483 (quoting *Beer*, 425 U.S. at 141). But *Beer* addressed only the meaning of discriminatory *effect* under Section 5.

Moreover, in *Miller* itself, this Court confirmed that purposeful racial discrimination remains an independent basis for a Section 5 objection even to an ameliorative, nonretrogressive plan. *Id.* at 2492. If such a plan can violate Section 5, a plan designed to perpetuate exclusive white control of the electoral process obviously can as well.

Furthermore, in *Shaw II*, this Court again recognized that an "ameliorative" plan could violate Section 5 if it "so discriminates on the basis of race as to violate the

Constitution." 1996 WL 315870, at *7 (quoting *Miller*, 115 S. Ct. at 2492). Indeed, in *Shaw II* the Court analyzed in detail North Carolina's reasons for adopting its first plan, which was not retrogressive, and for rejecting alternative plans. *Id.* at *8. If Section 5 did not reach nonretrogressive changes enacted with a discriminatory purpose, as the majority below suggests, *Shaw II*'s entire discussion of the legislature's purpose in enacting an ameliorative plan would have been unnecessary and irrelevant.

In the end, the majority's view that a nonretrogressive plan cannot be discriminatory ignores reality. Obviously, many covered jurisdictions in this country—like the Bossier Parish School Board—have had no elected black officials at all. And just as obviously, Congress did not mean to insulate such jurisdictions from a discrimination claim under Section 5 simply because they could not "retrogress" from zero. Where, as here, discrimination plays a part in choosing which communities or groups of voters to recognize in the line-drawing process, Congress plainly did not intend—and this Court has never held—that a claim of non-retrogression immunizes such discrimination from Section 5 review.[9] Such a result would transform the Board's "extraordinary success in resisting integration...[into] a shield for further resistance. Nothing could be further from the purposes of the Voting Rights Act." *Pleasant Grove*, 479 U.S. at 472.

---

9 *Cf. Barnett v. Daly*, 32 F.3d 1196, 1203 (7th Cir. 1994) (Posner, J.) (refusal on racial grounds to draw lines respecting minority communities "states a claim under the Constitution").

C. The Majority Erred in Providing Its Own Rebuttal to Board-Member Statements Indicating Discriminatory Intent

The majority not only improperly refused to consider critical evidence of discriminatory intent, it also erroneously provided its own speculation and rebuttal as to evidence that it did consider. Although the Attorney General and the Defendant-Intervenors offered statements by Board members directly indicating that they were "hostile" to black representation on the Board, the Board failed to explain these statements. The majority, however, improperly offered its own rebuttal of this evidence.

Specifically, School Board member Henry Burns said that Bossier was "hostile to black representation on the School Board." App. 31a. Bossier offered no evidence explaining this statement. Indeed, the majority acknowledged that the School Board did not even "cross-examine . . . on this point." *Id.* Nevertheless, the majority concluded on its own that Burns did not mean that the Board was hostile to "black representation" but that it merely objected to "drawing of majority-black districts in order to ensure black representation on the Board." *Id.*[10] This is an interpretation entirely of the

10 As noted above, however, hostility to black-majority districts, where the alternative is unlawful dilution of minority voting strength, may be a prohibited discriminatory intent. *See supra* p. 35 & n.9. As Justice Kennedy recently noted, the Court "would no doubt apply strict scrutiny if [a government body] decreed that certain districts had to be at least 50 percent white." *Vera*, 1996 WL 315857, at *25 (Kennedy, J., concurring). Thus, the majority below set up a false dichotomy in suggesting that admitted opposition to black-majority districts is not even evidence of discriminatory intent "unless section 5 imposes an affirmative obligation to draw majority-black districts." App. 31a. Where a jurisdiction is permitted to draw majority-black districts, *unexplained* "hostility" toward the idea is clearly probative of discriminatory purpose. And, under this Court's recent decisions,

majority's own making, and it is unsupported by any evidence of record.

Likewise, with respect to Thomas Myrick's statement to black leaders that he would not let them take his seat, the majority, again based on no record evidence, attributed this to a "strong desire not to have his district so changed that his constituency is obliterated." *Id.* at 32a. Mr. Myrick testified at the hearing in this case, but he never offered that explanation, and no evidence in the record suggests that making his 46.63% black district, App. 93a (Stip. 82), into a majority-black one would have dramatically altered his constituency.[11]

Our assertion is not that statements such as these necessarily prove discrimination standing alone. Rather our position is that such statements—evidencing hostility to black representation or to the drawing of a majority-minority district—are certainly *evidence* of discrimination, at least in a racially polarized jurisdiction such as this one.

Bossier is plainly at least *permitted* to draw a majority-black district. *Vera*, 1996 WL 315857; *Shaw II*, 1996 WL 315870.

11 Moreover, the desire not to have his constituency changed is at least evidence of discriminatory intent where, as here, racially polarized voting makes a predominantly white constituency valuable to the white incumbent. *See Perkins v. City of West Helena*, 675 F.2d 201, 214 (8th Cir.), *aff'd*, 459 U.S. 801 (1982) (similar statement by white public official about difficulty of reelection in majority-black district recognized as "direct evidence of discriminatory intent"). *See also Barnett*, 32 F.3d at 1199 (if "in order to protect incumbents . . . the redistricting authority deliberately adopted devices for limiting black representation (. . . because white incumbents were thought particularly vulnerable to challenge. . .), they would be engaged in deliberate racial discrimination") (Posner, J., citing *Ketchum v. Byrne*, 740 F.2d 1398, 1408 (7th Cir. 1984), *cert. denied*, 471 U.S. 1135 (1985)); *Garza v. County of Los Angeles*, 918 F.2d 763, 771 (9th Cir. 1990), *cert. denied*, 498 U.S. 1028 (1991).

The majority therefore erred in attempting to rebut such statements itself, rather than leaving it to the Board to address them, if it could. The majority in fact, misconstrued "the function of judicial review when it . . . speculate[d] upon what *might have*" been meant by these statements. *N.L.R.B. v. Great Dane Trailers, Inc.*, 388 U.S. 26, 34-35 (1967) (emphasis added). Indeed, as this Court recently reminded in *Shaw II*, "a racial classification cannot withstand strict scrutiny based upon speculation about what '*may have motivated*'" the state actor. 1996 WL 315870, at *6 n.4 (emphasis added).[12]

D. The Majority Erred in Concluding that the Presence of Some Legitimate Reasons for Adopting the Plan Was Sufficient for Preclearance Under Section 5

Not only did the majority ignore relevant evidence and invent its own answers for other evidence, but it also committed one further legal error in assessing discriminatory purpose: Having identified what it considered nondiscriminatory rationales for the Board's action, it failed to consider whether there were also discriminatory reasons for this action. Thus, while the majority itself found that a number of the School Board's purported reasons for adopting its election plan were pretextual, App. 27a n.15, it also concluded that "at least two of [its alleged reasons] are 'legitimate, nondiscriminatory motives.'" *Id.* at 27a (quoting *New York*, 874 F. Supp. at 400). Although these reasons too were actually pretextual, App. 56a-59a, the majority mistakenly found that they were genuine and erroneously held that this finding was sufficient to support a ruling for the Board.

However, the presence of some legitimate reason for an action is insufficient to establish that it was not unconstitutional under *Arlington Heights*. If a discriminatory purpose was *a* motivating factor in the Board's decision, preclearance must be denied. *See Pleasant Grove*, 479 U.S. at 471-72 (affirming finding of impermissible purpose where plan was motivated "in part" by discrimination).

Here, as noted above, the majority acknowledged that the Board lied about several of its alleged reasons for adopting the plan, App. 27a n.15, but nevertheless credited two: "guaranteed preclearance" and "easy implementation." The dissent effectively exposes these two rationales as "flagrantly pretextual." *Id.* at 56a-59a. But even assuming that these alleged motivations were true, they neither would refute[13] nor, as a matter of law,

---

12 By inventing nondiscriminatory interpretations of Board members' statements, the majority, like the district court reversed in *Miller v. WLFI Radio Inc.*, 687 F.2d 136 (6th Cir. 1982), deprived the Attorney General and the Defendant-Intervenors of a "fair opportunity" to prove discrimination and misapplied the applicable burden of proof. *Id.* at 139 (citing *Texas Dep't of Community Affairs v. Burdine*, 450 U.S. 248, 255-56 (1981)). "In light of the courts' customary reliance on a litigant to select the interpretation of the facts most favorable to his own case, this is a singular result indeed." *Miller v. WFLI Radio Inc.*, 687 F.2d at 138 (vacating and remanding Title VII action where trier of fact invented non-discriminatory rationale for defendant's conduct).

13 At one point, the majority acknowledged that other courts have required that, "[i]n addition [to evidence of legitimate, nondiscriminatory motives], the plaintiff must furnish some affirmative evidence that the proposed changes were not motivated by a discriminatory purpose." App. 27a n.14. Having disregarded most of the evidence that race was a motivating factor for the Board's action, however, the majority simply ignored the lack of evidence from the Board rebutting this proof.

The only shred of evidence that the majority pointed to as countering the overwhelming evidence of discriminatory purpose is the fact that the School Board appointed Jerome Blunt, a black person, to a temporary position on the Board. App. 31a, 34a. But Blunt was appointed to a six-month position in an 89% white district in which, given the racially polarized voting in Bossier

preclude the conclusion that a discriminatory purpose was "a factor" in the Board's decision. *Arlington Heights*, 429 U.S. at 265-66. The majority, however, never applied this governing standard. App. 39a-40a n.2. As a result, it failed to recognize that other compelling evidence of record required denial of preclearance in this case.

E. When the Majority's Errors Are Cured, It Is Plain that the Board's Action Was Motivated in Part By Discriminatory Purpose

When all of the evidence of record is fairly considered and judged under the governing standards, only one legal decision is possible, the one reached by Judge Kessler: the evidence is "overwhelming" that racial discrimination in part "fueled" the Board's decision. App. 39a, 63a. That is the conclusion this Court should reach. And in reaching that conclusion, the Court need not decide that a majority-minority district was *required* in Bossier Parish's redistricting plan. That is not the issue; the issue is whether the School Board adopted the Police Jury plan in part for a discriminatory purpose. The evidence is overwhelming that it did.

Thus, stipulated and unrebutted evidence supports Judge Kessler's uncontested findings, and those findings compel an inference of discriminatory purpose under *Arlington Heights*. The most important of these are that: (1) Bossier is a racially-polarized jurisdiction and, based on that polarization, the Board effectively kept blacks from being elected and kept them from electing

---

Parish, he had virtually no chance of election. Furthermore, the Board had an obvious motive for attempting to divert the attention of black voters from the redistricting process. App 54a n.9. In any case, the short-term appointment of a black member to the School Board in and of itself has little relevance to the Board's intention in adopting a long-term plan that plainly disfavored black voters.

candidates of their choice, even though they represent 20.1% of the population and 17.6% of the electorate, App. 40a; (2) Bossier is also a jurisdiction with a long history of discrimination in its schools, App. 42a-46a, and is one that has taken steps to prevent black citizens from influencing policy in those schools, App. 42a, 45a-46a; (3) the Board initially rejected the Police Jury plan, preferring instead to devise a plan of its own, one that might split precincts, App. 47a; (4) nevertheless, after the black community showed that majority-minority districts could properly be drawn, App. 41a, and even after a strong public outcry greeted the proposal to adopt the Police Jury plan, App. 48a-50a, the Board adopted the plan anyway—knowing that it violated many of its own traditional redistricting criteria, App. 50a-51a, and knowing also that the plan would effectively preclude blacks from electing their candidates of choice to the Board, App. 40a-41a; (5) nothing in the public record of the Board's decision indicated any reason for favoring the Police Jury plan, App. 50a; and (6) direct evidence indicated the "hostility" of several Board members toward any majority-black districts. App. 53a-54a.

Moreover, several of the majority's own findings support an inference of discriminatory purpose. Among these additional findings are that: (1) some of the Board's post-hoc rationalizations were "clearly . . . not real reasons" for its decision, App. 27a n.15;[14] (2) the Board considered black voters' concerns about vote dilution as "clouds over the . . . redistricting process" and

---

[14] The majority's finding that the School Board proffered shifting justifications for its decision supports a conclusion that the Board acted with a discriminatory purpose. *See, e.g., Southwest Merchandising Corp. v. N.L.R.B.*, 53 F.3d 1334, 1344 (D.C. Cir. 1995); *E.E.O.C. v. Ethan Allen, Inc.*, 44 F.3d 116, 120 (2d Cir. 1994) (citing cases); *cf. St. Mary's Honor Center v. Hicks*, 113 S. Ct. 2742, 2749 (1993).

concluded that "[a]ny port will do in a storm," App. 28a;[15] (3) Board member Myrick, who lives in an area that "would likely be included in any majority-black district to be drawn in the northern part of Bossier Parish," App. 81a (Stip. 48), lied about his involvement in the Police Jury's redistricting process, App. 5a, and promoted the Police Jury's plan to preserve his majority-white "constituency." App. 32a.

Finally, viewed in light of the relevant evidence, the two rationalizations for the Board's actions that the majority credited, App. 27a-28a—but which are legally insufficient to justify preclearance, *see supra* I.D.—actually are "*so flagrantly pretextual* as to further corroborate the conclusion that the School Board acted with discriminatory purpose." App. 59a (Kessler, J., dissenting) (emphasis added). Thus, the claimed desire to avoid or to minimize splitting precincts was clearly of little importance to the Board.[16] Likewise, the notion that the Police Jury plan offered "guaranteed preclearance" was plainly disingenuous. *See supra* pp. 22-23.

This Court should not preclear a plan on such a record. Unlike the majority, both the Attorney General and

---

15 These findings confirm that the Board wished to avoid any further dealings with black-voter concerns and to cut short the risk that such voters might be able to elect Board members who would force serious consideration of these issues. This may not reflect racial animosity, but it is racial discrimination nonetheless. App. 143a (Stip. 256) (citing *Garza*, 918 F.2d at 778 n.1 (Kozinski, J., concurring in relevant part)).

16 As the majority recognized, the Board originally envisioned adopting a plan that split precincts. App. 29a; *id.* at 72a (Stip. 23); J.A 168 (Joiner). Although the Board was "always free to request precinct changes from the Police Jury," *id.* at 72a (Stip. 23), it neither calculated the cost of such changes nor approached "the Police Jury to request precinct changes" before it adopted the Police Jury plan. App. 7a.

Judge Kessler assessed the entirety of this "extensive record" and concluded that it overwhelmingly demonstrated racial discrimination. Judge Kessler's full assessment of the relevant evidence should be sustained.

II. THE BOSSIER PARISH SCHOOL BOARD'S PROPOSED REDISTRICTING PLAN ALSO VIOLATES SECTION 5 BECAUSE ITS IMPLEMENTATION WOULD CONSTITUTE A CLEAR VIOLATION OF SECTION 2

The majority below erred both in ruling that a violation of Section 2 does not constitute an independent basis for denying preclearance under Section 5 and in even reaching the issue in this case. The overwhelming proof of discriminatory purpose under Section 5 made it unnecessary to address the hypothetical question of whether an objection would be proper in a case in which *only* a Section 2 violation is shown. Accordingly, should this Court reverse on the ground that the majority failed to apply the standards set forth in *Arlington Heights* in assessing discriminatory purpose, the Court need not address the question whether preclearance may be denied based solely on a violation of Section 2.

On the other hand, if the Court determines that it should answer this important question in this case, we submit that the Attorney General has a duty under Section 5 to object to a voting change that constitutes a violation of Section 2. *See* Jurisdictional Statement of Janet Reno, *et al.*, at 23-27 (filed March 11, 1996).

When Congress amended the Voting Rights Act in 1982, it extended Section 5 and rejected the rule of *Mobile v. Bolden*, 446 U.S. 55 (1980), that proof of discriminatory purpose was necessary to establish unlawful vote dilution under Section 2. Prior to that time, the Court had interpreted Section 5 to allow denial of preclearance based on a finding of unconstitutional vote dilution. *Beer*, 425 U.S. at 141. Before *Bolden*, however, the constitutional and statutory Section 2

standards were identical—the "results test" of *White v. Regester*, 412 U.S. 755 (1973).[17] Because the standards for unlawful vote dilution under Section 2 and the Constitution diverged as a result of *Bolden* and the 1982 amendments, the question naturally arose whether Congress intended violations of amended Section 2 to remain within the ambit of Section 5.

Congress answered this question and indicated that it still "intended that a section 5 objection also follow if a new voting procedure itself so discriminates as to violate Section 2." S. Rep. No. 417, 97th Cong. 2d Sess. 12 n. 31 (1982). Indeed, just this Term this Court noted that "there has never been any doubt . . . that changes in practices within covered jurisdictions that would be potentially objectionable under § 2 are also covered under § 5." *Morse v. Republican Party of Virginia*, 116 S. Ct. 1186, 1201 (1996) (plurality opinion). *See also id.* at 1236 ("§§ 2 and 5 would appear to be designed to work in tandem") (Thomas, J., dissenting).

A contrary interpretation of the Voting Rights Act, as this case makes clear, would be extremely impractical and would undermine congressional intent; indeed, it would require the Attorney General and the D.C. District Court to preclear plans that they know violate federal law. As this Court pointed out in *Morse*, "[i]f § 5 were narrower than § 2, then a covered jurisdiction would not need to preclear changes in voting practices known to be illegal." *Id.* at 1201.

The lower court's interpretation also would impose substantial burdens on covered jurisdictions like Bossier

---

17 Indeed, the Court in *Beer* not only specifically noted that *White v. Regester* was the then-existing Fourteenth Amendment standard, but suggested that a plan violating that standard would also contravene the "effect" prong of Section 5. *Beer*, 425 U.S. at 142-43 n.14.

and private parties like the Defendant-Intervenors. Indeed, in a case—unlike this one—where unlawful vote dilution was established but the evidence fell short of establishing discriminatory purpose, the covered jurisdiction likely would have to defend a subsequent Section 2 case in which a local federal court would hear much of the same evidence considered in the Section 5 declaratory judgment action in the D.C. District Court. Bossier's stipulation that the court below should decide whether a Section 2 violation existed, App. 144a (Stip. 257), apparently reflects its desire to avoid this gross inefficiency. "It is unlikely that Congress intended such an anomalous result." *Morse*, 116 S. Ct. at 1201 (quoting *Chisom v. Roemer*, 501 U.S. 380, 402 (1991)).

Thus, the system intended by Congress and implemented by the Attorney General is fair and workable. In contrast, the court's ruling below ignores Congress' intent and creates an inefficient system of double litigation that will siphon resources from both the federal courts and local governments. Therefore, the decision below rejecting the Attorney General's long-standing interpretation of Section 5 is incorrect and provides an independent basis for reversing the decision below.

CONCLUSION

For all of the foregoing reasons, this Court should reverse the judgment below.

Respectfully submitted,

BARBARA R. ARNWINE
THOMAS J. HENDERSON
BRENDA WRIGHT
SAMUEL L. WALTERS

LAWYERS' COMMITTEE FOR
CIVIL RIGHTS UNDER LAW
1450 G Street, N.W., Suite 400
WASHINGTON, D.C. 20005
(202) 662-8322

WALTER A. SMITH, JR.
PATRICIA A. BRANNAN*
JOHN W. BORKOWSKI

HOGAN & HARTSON L.L.P.
555 Thirteenth Street, N.W.
Washington, D.C. 20004
(202) 637-8686

* Counsel of Record

Counsel for Appellants
George Price et al.

Supreme Court, U.S.
FILED
AUG 1 1996
CLERK

(6) (5)

Nos. 95-1455 & 95-1508

In The

Supreme Court of the United States

October Term, 1995

JANET RENO, ATTORNEY GENERAL OF THE UNITED STATES,

Appellant,

and

GEORGE PRICE, ET AL.,

Appellants,

v.

BOSSIER PARISH SCHOOL BOARD,

Appellee.

On Appeal From The United States District Court For The District Of Columbia

BRIEF AMICI CURIAE OF AMERICAN CIVIL LIBERTIES UNION AND THE NAACP LEGAL DEFENSE AND EDUCATIONAL FUND, INC. IN SUPPORT OF APPELLANTS

ELAINE R. JONES
Director-Counsel
NORMAN J. CHACHKIN
JACQUELINE BERRIEN
NAACP Legal Defense and Educational Fund, Inc.
99 Hudson Street
New York, NY 10013
(212) 219-1900

LAUGHLIN MCDONALD
NEIL BRADLEY
MAHA S. ZAKI
American Civil Liberties Union Foundation
44 Forsyth Street
Suite 202
Atlanta, GA 30303
(404) 523-2721

STEVEN R. SHAPIRO
American Civil Liberties Union Foundation
132 West 43rd Street
New York, NY 10036
(212) 944-9800
Counsel for Amicus Curiae

COCKLE LAW BRIEF PRINTING CO., (800) 225-6964
OR CALL COLLECT (402) 342-2831

27 pp

TABLE OF CONTENTS

	Page
TABLE OF AUTHORITIES	ii
INTEREST OF AMICI CURIAE	1
SUMMARY OF ARGUMENT	2
ARGUMENT	5
I. Section 2 Applies to Section 5 Preclearance	5
A. Interpretation of Section 5 Effects Test Prior to 1982	6
B. Congressional Action in 1982	8
C. The Attorney General's Regulations	11
D. The Legislative History Cannot Be Discounted	13
E. Congress Did Amend the Voting Rights Act	16
F. Some Voting Changes Are Not Amenable to Analysis Under the Retrogression Standard	18
CONCLUSION	20

TABLE OF AUTHORITIES

Page

CASES:

American Jewish Congress v. Kreps, 574 F.2d 624 (D.C.Cir. 1978) 13

Beer v. United States, 425 U.S. 130 (1976) 2, 6, 7, 8, 10, 19

Bush v. Vera, 1996 WL 315857 (U.S. June 13, 1996) 1

Chisom v. Roemer, 501 U.S. 380 (1991) 1, 15

City of Mobile v. Bolden, 446 U.S. 55 (1980) 6

City of Richmond, Virginia v. United States, 422 U.S. 358 (1975) 18

City of Lockhart v. United States, 460 U.S. 124 (1983) 5

City of Rome v. United States, 446 U.S. 156 (1980) 14

Connecticut National Bank v. Germain, 503 U.S. 249 (1992) 9

FEA v. Algonquin SNG, Inc., 426 U.S. 548 (1976) 15

Garcia v. United States, 469 U.S. 70 (1984) 13

Georgia v. Reno, 881 F.Supp. 7 (D.D.C. 1995)..... 2

Grove City College v. Bell, 465 U.S. 555 (1984)..... 16

Holder v. Hall, 114 S.Ct. 2581 (1994)..... 1

Horry County v. United States, 449 F.Supp. 990 (D.D.C. 1978)..... 18

Houston Lawyers' Association v. Attorney General of Texas, 501 U.S. 419 (1991)..... 15

Johnson v. DeGrandy, 129 L.Ed.2d 775 (1994)..... 9

TABLE OF AUTHORITIES – Continued

Page

Lorillard v. Pons, 434 U.S. 573 (1978) 10

McCain v. Lybrand, 465 U.S. 236 (1984)..... 18

McDaniel v. Sanchez, 452 U.S. 130 (1981)..... 15

Miller v. Johnson, 115 S.Ct. 2475 (1995) 1, 13

Mississippi v. Smith, 541 F.Supp. 1329 (D.D.C. 1982), appeal dism'd, 461 U.S. 912 (1983) 6

Mississippi v. United States, 490 F.Supp. 569, (D.D.C. 1979), aff'd mem., 444 U.S. 1050 (1980) 6

NAACP v. Button, 371 U.S. 415 (1963) 1

NLRB v. Fruit Packers, 377 U.S. 58 (1964)..... 15

North Haven Board of Education v. Bell, 456 U.S. 512 (1982)..... 15

Perkins v. Matthews, 400 U.S. 379 (1971)..... 9

Shaw v. Hunt, 1996 WL 315870 (U.S. June 13, 1996) 1

South Carolina v. Katzenbach, 383 U.S. 301 (1966) 17

Texas v. United States, 1995 WL 769160 (D.D.C. 1995)..... 2

Thornburg v. Gingles, 478 U.S. 30 (1986) 1, 4, 5, 6, 13, 14

United Jewish Org. v. Carey, 430 U.S. 144 (1977) 1

United States v. Board of Commissioners of Sheffield, Ala., 435 U.S. 110 (1978)..... 10, 13, 14, 19

United States v. Hays, 115 S.Ct. 2431 (1995)..... 1

Washington v. Davis, 426 U.S. 299 (1976)..... 6

White v. Regester, 412 U.S. 755 (1972)..... 6

TABLE OF AUTHORITIES – Continued

Page

Wilkes County, Georgia v. United States, 450 F.Supp. 1171 (D.D.C. 1978), aff'd mem., 439 U.S. 999 (1981) 7

Zuber v. Allen, 396 U.S. 168 (1969) 13

CONSTITUTIONAL PROVISIONS:

Fourteenth Amendment 6, 17

Fifteenth Amendment 6, 17

STATUTORY PROVISIONS:

Age Discrimination Act of 1975:

42 U.S.C. § 6102 16

42 U.S.C. § 6107 17

Civil Rights Act of 1964:

42 U.S.C. § 2000d 17

28 U.S.C. § 2000d-4 17

Civil Rights Restoration Act of 1987

Education Amendments of 1972:

20 U.S.C. § 1681(a) 16

20 U.S.C. § 1687 17

Rehabilitation Act of 1973:

29 U.S.C. § 794 16

29 U.S.C. § 794(b) 17

TABLE OF AUTHORITIES – Continued

Page

Voting Rights Act of 1965:

42 U.S.C. § 1973, Section 2 ..... 5, 11, 12, 13, 14, 15

42 U.S.C. § 1973c, Section 5 ..... *passim*

42 U.S.C. § 4(f)(4) 10

House and Senate Reports:

H.R. Rep. No. 439, 89th Cong., 1st Sess. (1965) 14

H.R. Rep. No. 196, 94th Cong., 1st Sess. (1975) ... 14, 15

Oversight Hearings on Proposed Changes to Regulations Governing Section 5 of the Voting Rights Act, before the Subcomm. on Civil and Constitutional Rights of the House Committee on the Judiciary House of Representatives, 99th Cong., 1st Sess. (1985) 12

S. Rep. No. 162, 89th Cong., 1st Sess. (1965) 14

S. Rep. No. 295, 94th Cong., 2d Sess. (1975) 15

S. Rep. No. 417, 97th Cong., 2d Sess. (1982) 3, 9, 15

S. Rep. No. 64, 100th Cong., 2d Sess. (1987) 17

Subcommittee on Civil and Constitutional Rights of the Comm. on the Judiciary U.S. House of Representatives, 99th Cong., 2d Sess., Voting Rights Act: Proposed Section 5 Regulations (Comm. Print 1986 Ser. No. 9) 11, 12, 16

Voting Rights Act: Hearings Before the Subcomm. on the Constitution of the Senate Comm. on the Judiciary, 97th Cong., 2d Sess. (1982) 10

TABLE OF AUTHORITIES – Continued

Page

OTHER:

28 C.F.R. § 51.55(b)(2) 12

28 C.F.R. § 51.54(b)(3) 7

28 C.F.R. § 51.54(b)(4) 18

128 Cong. Rec. H3841 .....3, 9

128 Cong. Rec. H3840-41.....3, 9

128 Cong. Rec. S7095 .....3, 9

50 Fed. Reg. 19122 (1985)..... 12

52 Fed. Reg. 486-90 (1987) 19

MISCELLANEOUS:

Gayle Binion, "The Interpretation of Section 5 of the 1965 Voting Rights Act: A Retrospective on the Role of Courts," 32 *W.Pol.Q.* 154 (1979) 7

Richard L. Engstrom, "Racial Vote Dilution: Supreme Court Interpretation of Section 5 of the Voting Rights Act," 4 *So.U.L.Rev.* 139 (1978)..... 7

Mark E. Haddad, "Getting Results Under Section 5 of the Voting Rights Act," 94 *Yale L.J.* 139 (1984) 7

Heather K. Way, "A Shield or a Sword? Section 5 of the Voting Rights Act and the Argument for the Incorporation of Section 2," 74 *Tex.L.Rev.* 1439 (1996)..... 11

INTEREST OF AMICI CURIAE[1]

The American Civil Liberties Union (ACLU) is a nationwide, nonprofit, nonpartisan organization with nearly 300,000 members dedicated to defending the principles of liberty and equality embodied in the Constitution and this nation's civil rights laws. As part of that commitment, the ACLU has been active in defending the equal right of racial and other minorities to participate in the electoral process. Specifically, the ACLU has participated in voting cases before this Court, both as direct counsel, *see, e.g., Holder v. Hall*, 114 S.Ct. 2581 (1994), *Miller v. Johnson*, 115 S.Ct. 2475 (1995), and as *amicus curiae, see, e.g., United States v. Hays*, 115 S.Ct. 2431 (1995).

The NAACP Legal Defense and Educational Fund, Inc. is a nonprofit corporation chartered by the Appellate Division of the New York Supreme Court as a legal aid society. The Fund was established for the purpose of assisting African Americans in securing their constitutional and civil rights. *See NAACP v. Button*, 371 U.S. 415, 422 (1963) (noting Fund's "reputation for expertness in presenting and arguing the difficult questions of law that frequently arise in civil rights litigation"). The Fund has participated in many of the significant constitutional and statutory voting rights cases in this Court. *See e.g., United Jewish Org. v. Carey*, 430 U.S. 144 (1977); *Thornburg v. Gingles*, 478 U.S. 30 (1986); *Chisom v. Roemer*, 501 U.S. 380 (1991); *Shaw v. Hunt*, 1996 WL 315870 (U.S. June 13, 1996); and *Bush v. Vera*, 1996 WL 315857 (U.S. June 13, 1996).

---

[1] Letters of consent to the filing of this brief have been lodged with the Clerk of the Court pursuant to Rule 37.3.

SUMMARY OF ARGUMENT

The appeal of this declaratory judgment action under Section 5 of the Voting Rights Act presents two separate issues: (1) whether the district court erred in holding that the Bossier Parish School Board carried its burden of proving a lack of discriminatory purpose in enacting its redistricting plan, and (2) whether a violation of Section 2 of the Voting Rights Act provides an independent basis for denying preclearance under Section 5. *Amici* agree that, in this case, it is unnecessary for the Court to reach the second issue, because the district court majority clearly erred in applying the purpose prong of Section 5, and its decision must be reversed on that basis. In the event, however, that the Court reaches the second issue, this *amici* brief is submitted to describe the context and legislative history of amended Section 2 which clearly demonstrate Congress' intent to assure that a voting change violating Section 2 of the Act would not be required to receive preclearance under Section 5 of the Act. To avoid repetition of the arguments in the principal briefs, the *amici* brief is limited to this latter issue, as to which *amici* have a special interest based on their involvement as counsel in past Section 5 cases that have addressed this issue. *See Georgia v. Reno*, 881 F.Supp. 7 (D.D.C. 1995) (three-judge court); *Texas v. United States*, 1995 WL 769160 (D.D.C. 1995) (three-judge court).

The legislative history of the 1982 amendments and extension of the Voting Rights Act show that Congress intended for the results standard of Section 2 to apply to Section 5 preclearance. Congress was well aware of the limitations of the retrogression standard of *Beer v. United States*, 425 U.S. 130 (1976), when it extended and

amended the Act in 1982. The Senate Report that accompanied the amendments provides that "[i]n light of the amendment to section 2, it is intended that a section 5 objection also follow if a new voting procedure so discriminates as to violate section 2." S. Rep. No. 417, 97th Cong., 2d Sess. 12 n.31 (1982).

The principal cosponsors of the 1982 amendments, Senator Kennedy and Representative Sensenbrenner, reiterated on the floors of the Senate and House during the legislative debates that "where there is a section 5 submission which is not retrogressive, it would be objected to only if the new practice itself violated the Constitution or amended section 2." 128 Cong. Rec. S7095 (daily ed. June 16, 1982) (remarks of Sen. Kennedy); 128 Cong. Rec. H3841 (daily ed. June 23, 1982) (remarks of Rep. Sensenbrenner). Representative Edwards, a sponsor of the final bill and chair of the House subcommittee with jurisdiction over the extension of the Act, concurred with Representative Sensenbrenner's interpretation of the bill. 128 Cong. Rec. H3840-41.

Congress also acted with knowledge of the Attorney General's then established practice of denying preclearance to changes which violated other provisions of the Act. When Congress reenacts a statute and voices its approval of an administrative or other interpretation of the statute, as it did in the Senate Report, Congress is treated as having adopted that interpretation, and the courts are bound by it.

The Senate Report is entitled to greater weight than any other of the legislative history. This Court has described the Senate Report as being "the authoritative

source" for construction of the 1982 amendments to the Act. *Thornburg v. Gingles*, 478 U.S. 30, 43 n.7 (1986). It has been the established practice of the Court, moreover, to examine the applicable committee reports to determine congressional intent and the meaning of specific provisions of the Voting Rights Act, particularly Section 5, where the statute itself was silent or ambiguous.

While Congress did not amend Section 5, it did amend the Voting Rights Acts and provided that amended Section 2 was to apply to preclearance. It is common for Congress to add a provision to an act and apply it to a second provision of the same act without changing the language of the second provision.

Some voting changes are not amenable to analysis under a retrogression standard. A change from appointed to elected county commissioners, for example, would be covered by Section 5, but it might be difficult to determine the effect of such a change based upor a retrogression analysis. In other cases, there may be no practice or procedure *at all* that can be used as a benchmark for determining retrogression, *e.g.*, where a newly incorporated college district or municipality selects for the first time a method of conducting elections. Under the circumstances, a voting plan which fairly reflects the strength of the minority community as it exists would furnish the logical and appropriate basis for comparison.

The application of Section 2 to preclearance would not cause a major or disruptive change in the administration of Section 5. The Attorney General has administered the statute in such a manner in the past. The purpose or effect standards would continue to apply and dispose of

the vast majority of submitted voting changes. It would make very little sense from the standpoint of public policy and conserving judicial resources to allow violations of one section of the Voting Rights Act (Section 2) to be approved by another (Section 5). Such a result would undercut the enforcement mechanisms and the overall purpose of the Act. The evidence shows that Congress intended to correct the anomalies of *Beer* by applying Section 2 to Section 5 preclearance.

ARGUMENT

I. Section 2 Applies to Section 5 Preclearance

The legislative history of the 1982 amendments and extension of the Voting Rights Act of 1965, 42 U.S.C. § 1973 *et seq.*, make it clear that Congress intended for the results standard of Section 2 to apply fully to Section 5 preclearance. Accordingly, a covered jurisdiction such as Bossier Parish would be entitled to preclearance of its voting changes only if it showed that they did not "result" in discrimination as that term has been defined by Congress and the Supreme Court. *Thornburg v. Gingles*, 478 U.S. 30, 35-8, 48-51 (1986).[2]

---

[2] The issue of the applicability of Section 2 to Section 5 was presented in *City of Lockhart v. United States*, 460 U.S. 124, 133 n.9 (1983), but because the district court had not passed on it this Court declined to grant review in the first instance.

A. Interpretation of Section 5 Effects Test Prior to 1982

A majority of the Court, in a divided opinion, held in *Beer v. United States*, 425 U.S. 130 (1976), that only changes which were retrogressive or affirmatively diminished minority voting rights were prohibited by the "effect" language of Section 5.

Beer, however, was by its own terms ambiguous, for while the Court adopted a retrogression test, the Court nonetheless acknowledged that an ameliorative submission would be objectionable under Section 5 if it "so discriminates on the basis of race or color as to violate the Constitution." 425 U.S. at 141. Cases cited by the majority in *Beer* as illustrative of the applicable constitutional standard included *White v. Regester*, 412 U.S. 755 (1972), which applied an effect standard in minority vote dilution cases. *See Thornburg v. Gingles*, 478 U.S. at 35 (describing *White v. Regester* as embodying a "results test").[3] Thus, *Beer* itself may properly be said to contain an anti-dilution exception to the very retrogression standard which it purported to establish.[4]

---

[3] *Washington v. Davis*, 426 U.S. 299 (1976), and *City of Mobile v. Bolden*, 446 U.S. 55 (1980), which held respectively that proof of a discriminatory purpose was required for a violation of the Fourteenth or Fifteenth Amendments, were decided after *Beer*.

[4] The retrogression standard of *Beer* was strongly criticized by legal commentators. Principal objections were that it sanctioned and perpetuated vote dilution, rewarded jurisdictions with the worst histories of discrimination against minority voters, and largely ignored the legislative history and underlying purposes of the Voting Rights Act. Gayle Binion, "The Interpretation of Section 5 of the 1965 Voting Rights Act: A Retrospective on the Role of Courts," 32 *W.Pol.Q.* 154, 171 (1979); Richard L. Engstrom, "Racial Vote Dilution: Supreme Court Interpretation of Section 5 of the Voting Rights Act," 4 *So.U.L.Rev.* 139, 162 (1978); Mark E. Haddad, "Getting Results Under Section 5 of the Voting Rights Act," 94 *Yale L.J.* 139 (1984).

In recognition of its limitations and anomalies, the courts created a number of exceptions to the strict application of the retrogression principle. For example, the District of Columbia court has held that a new legislative plan cannot be approved, even if it is not retrogressive compared with the preexisting legislative plan, if it diminishes minority voting strength when compared with an intervening court ordered plan. *Mississippi v. United States*, 490 F.Supp. 569, 582 (D.D.C. 1979), *aff'd mem.*, 444 U.S. 1050 (1980); *Mississippi v. Smith*, 541 F.Supp. 1329, 1333 (D.D.C. 1982) (three-judge court), *appeal dism'd*, 461 U.S. 912 (1983). Preexisting districts that have not themselves been precleared may also not be used in determining if a submission is retrogressive. *Mississippi v. Smith*, 541 F.Supp. at 1332. *Accord*, 28 C.F.R. § 51.54(b)(3).

In *Wilkes County, Georgia v. United States*, 450 F.Supp. 1171 (D.D.C. 1978) (three-judge court), *aff'd mem.*, 439 U.S. 999 (1981), the court created another important exception to *Beer* where an existing plan was malapportioned. Wilkes County, which was 47% black, sought preclearance of a change from district to at-large elections. It argued that the proposed change did not have a discriminatory effect within the meaning of *Beer* because even if blacks were not able to elect candidates of their choice

at-large, neither did they control any of the preexisting single member districts. The court rejected the county's argument:

> Since the existing districts are severely malapportioned, it is appropriate, in measuring the effect of the voting changes, to compare the voting changes with options for properly apportioned single-member district plans.

450 F.Supp. at 1178. Based upon the census, if Wilkes County had been divided into fairly drawn single-member districts of equal population, the black population in one district could have been as high as 71%. Using the proper basis for comparison, the court concluded that blacks were worse off under the change, and that "the at-large method has . . . a racially discriminatory effect." *Id.*

B. Congressional Action in 1982

Congress was well aware of *Beer* and its limitations when it extended and amended the Voting Rights Act in 1982. In amending Section 2 it incorporated the results standard for determining the lawfulness of voting practices, and provided that the amended statute was to apply to Section 5 preclearance. According to the Senate Report that accompanied the amendments:

> Under the rule of *Beer v. United States* . . . a voting change which is ameliorative is not objectionable unless the change 'itself so discriminates on the basis of race or color as to violate the Constitution.' . . . In light of the amendment to section 2, it is intended that a section 5 objection also follow if a new voting procedure so discriminates as to violate section 2.

S. Rep. No. 417, 97th Cong., 2d Sess. 12 n.31 (1982) (citations omitted).[5]

The principal cosponsors of the 1982 amendments, Senator Kennedy and Representative Sensenbrenner, reiterated on the floors of the Senate and House during the legislative debates that "where there is a section 5 submission which is not retrogressive, it would be objected to only if the new practice itself violated the Constitution or amended section 2." 128 Cong. Rec. S7095 (daily ed. June 16, 1982) (remarks of Sen. Kennedy); 128 Cong. Rec. H3841 (daily ed. June 23, 1982) (remarks of Rep. Sensenbrenner). Representative Edwards, a sponsor of the final bill and chair of the House subcommittee with jurisdiction over the extension of the Act, concurred with Representative Sensenbrenner's interpretation of the bill. 128 Cong. Rec. H3840-41.

Congress also acted with knowledge of the Attorney General's then established practice of denying preclearance to changes which violated other provisions of the Act. The Attorney General, for example, had consistently denied Section 5 preclearance to changes which violated Section 4(f)(4) of the Act, a provision requiring

---

[5] Given the ambiguity in the effect standard, resort to the legislative history to determine its meaning is both necessary and proper. *See Connecticut National Bank v. Germain*, 503 U.S. 249, 253-54 (1992). The Court has regularly applied this principle in construing the Voting Rights Act. *See, e.g., Johnson v. DeGrandy*, 129 L.Ed.2d 775, 795 (1994); *Perkins v. Matthews*, 400 U.S. 379, 389 n.8 (1971).

certain jurisdictions to implement bilingual voting procedures. Voting Rights Act: Hearings Before the Subcomm. on the Constitution of the Senate Comm. on the Judiciary, 97th Cong., 2d Sess. 1659 (1982) [hereinafter Voting Rights Act Hearings (1982)]. This interpretation of Section 5 was reported to Congress by William Bradford Reynolds, Assistant Attorney General for Civil Rights, when it considered the extension and amendment of the Act in 1982. Voting Rights Act Hearings (1982) at 1659, 1720.

In its discussion of *Beer*, the Senate Report also noted and approved the Attorney General's practice of not applying a strict retrogression test, but treating submissions "on a case-by-case basis, 'in light of all the facts.' " S. Rep. No. 417 at 12 n.31. When Congress reenacts a statute and voices its approval of an administrative or other interpretation of the statute, as it did in the Senate Report, "Congress is treated as having adopted that interpretation, and the Court is bound thereby." *United States v. Board of Commissioners of Sheffield, Ala.*, 435 U.S. 110, 134 (1978). *Accord, Lorillard v. Pons*, 434 U.S. 573, 580 (1978) ("Congress is presumed to be aware of an administrative or judicial interpretation of a statute and to adopt that interpretation when it re-enacts a statute without change").

Congress further confirmed its intention that Section 2 standards were to apply to preclearance when it conducted oversight hearings in 1985 on the Attorney General's proposed revisions of the regulations governing Section 5. According to the House Report, "the Subcommittee concludes that it is a proper interpretation of the legislative history of the 1982 amendments to use Section

2 standards in the course of making Section 5 determinations." Subcommittee on Civil and Constitutional Rights of the Comm. on the Judiciary U.S. House of Representatives, 99th Cong., 2d Sess., Voting Rights Act: Proposed Section 5 Regulations 5 (Comm. Print 1986 Ser. No. 9) [hereinafter Comm. Print (1986)].[6]

The lower court's observation that Section 2 and Section 5 are "different," App. 15a, is a non sequitor. The sections *are* different. The issue, however, is whether Section 2 standards are to be applied in Section 5 preclearance. The legislative history indicates that they should be.

C. The Attorney General's Regulations

In light of the 1982 amendments, the Attorney General adopted regulations in 1987 calling for the application of Section 2 standards to Section 5 preclearance. The regulations, which were widely circulated prior to their

---

[6] Following those hearings, prominent members of Congress endorsed this construction of the Act in correspondence addressed to the Attorney General following rumors that the Department of Justice would abandon the application of Section 2 standards in the Section 5 review process. Senator Dole, for example, stated that he had " 'a vital interest in assuring that the Voting Rights Act is interpreted . . . consistent with Congress' intent. Preclearing voting changes that violate Section 2 would threaten the integrity of Section 5 as a barrier to all illegal voting discrimination and be in direct conflict with the law's legislative history.' " *See* Heather K. Way, "A Shield or a Sword? Section 5 of the Voting Rights Act and the Argument for the Incorporation of Section 2", 74 *Tex.L.Rev.* 1439, 1468 (1996) (quoting this and other letters).

promulgation[7] and were the subject of Congressional hearings, *see* Oversight Hearings on Proposed Changes to Regulations Governing Section 5 of the Voting Rights Act, before the Subcomm. on Civil and Constitutional Rights of the House Committee on the Judiciary House of Representatives, 99th Cong., 1st Sess. (1985) [hereinafter Oversight Hearings], provide that:

> In those instances in which the Attorney General concludes that, as proposed, the submitted change is free of discriminatory purpose and retrogressive effect, but also concludes that a bar to implementation of the change is necessary to prevent a clear violation of amended Section 2, the Attorney General shall withhold Section 5 preclearance.

28 C.F.R. § 51.55(b)(2).

Since the 1982 amendments and the promulgation of the regulations, the Attorney General has continued to object to submissions if they violated Section 2. *See* Comm. Print (1986) at 4; Oversight Hearings (1985) at 210-12, 229-34 (describing Section 5 objections in 1983 to redistricting plans from Amite and Oktibbeha Counties, Mississippi on the grounds that they violated amended Section 2). While the regulations and decisions of the Attorney General are not binding upon the courts, the contemporaneous administrative construction of the Act by the Attorney General is persuasive evidence of the intent of Congress in enacting the 1982 amendments.

---

[7] The regulations were published in proposed form for comment. 50 Fed. Reg. 19122 (May 6, 1985).

United States v. Board of Commissioners of Sheffield, Alabama, 435 U.S. at 131.[8]

D. The Legislative History Cannot Be Discounted

Despite the evidence noted above, the court below held that Section 2 does not apply to Section 5 because the legislative history is not extensive. App. 17a. The Senate Report, as the report commended to the full Senate and representing the collective understanding of the members involved in drafting and studying the proposed legislation, is entitled to greater weight than any other of the legislative history. *See Garcia v. United States*, 469 U.S. 70, 76 n.3 (1984) ("the authoritative source for finding the legislature's intent lies in the Committee Reports on the bill, which 'represen[t] the considered and collective understanding of those Congressmen involved in drafting and studying proposed legislation,' " *quoting Zuber v. Allen*, 396 U.S. 168, 186 (1969); *American Jewish Congress v. Kreps*, 574 F.2d 624, 629 n.36 (D.C.Cir. 1978) ("[s]ince the conclusions in the conference report were commended to the entire Congress, they carry greater weight than other of the legislative history"). In addition, the Supreme Court has described the Senate Report as being "the authoritative source" for construction of the 1982 amendments to the Act. *Thornburg v. Gingles*, 478 U.S. at 43 n.7.

---

[8] In *Miller v. Johnson*, 115 S.Ct. 2475, 2493 (1995), the Court confirmed the retrogression standard of the effect prong of Section 5, but the issue of the incorporation of Section 2 standards into preclearance was not presented, and thus not decided, in *Miller*.

In *Thornburg v. Gingles*, the *amicus* supporting the appellants argued that the report represented "a compromise among conflicting 'factions,' and thus is somehow less authoritative than most Committee Reports." 478 U.S. at 43 n.7. The Supreme Court rejected the claim.

> We are not persuaded that the legislative history of amended § 2 contains anything to lead us to conclude that this Senate Report should be accorded little weight. We have repeatedly recognized that the authoritative source for legislative intent lies in the Committee Reports on the bill.

Id. The Court went on to rely extensively on the Senate Report and cited it numerous times in construing amended Section 2. 478 U.S. at 43-8.

It has been the established practice of the Court, moreover, to examine the applicable committee reports to determine congressional intent and the meaning of specific provisions of the Voting Rights Act, particularly Section 5, where the statute itself was silent or ambiguous. In *Beer*, in determining how to measure discriminatory effect, as to which Section 5 itself was silent, the Court relied mainly upon the House Report of the 1975 extension of the Act. 425 U.S. at 141 (citing H.R. Rep. No. 196, 94th Cong., 1st Sess. 60 (1975)). In *City of Rome v. United States*, 446 U.S. 156, 168-69 (1980), the Court resolved the question whether individual jurisdictions could bailout from Section 5 coverage by examining the House and Senate Reports. 446 U.S. at 168-69 (citing H.R. Rep. No. 439, 89th Cong., 1st Sess. (1965), and S. Rep. No. 162, 89th Cong., 1st Sess. (1965)). In *United States v. Board of Commissioners of Sheffield County, Alabama*, in concluding that

subjurisdictions were subject to preclearance by virtue of statewide Section 5 coverage, the Court found particularly "significant" the discussion of the issue in the House and Senate reports. 435 U.S. at 134 (citing S. Rep. No. 295, 94th Cong., 2d Sess. 12 (1975), and H.R. Rep. No. 196 at 5). In *McDaniel v. Sanchez*, 452 U.S. 130 (1981), the Court discussed the 1975 committee reports at length in holding that any voting change, including those ordered into effect by a local federal court, which reflects the policy choices of elected officials is subject to Section 5. 452 U.S. at 146-51 (citing S. Rep. No. 295 and H.R. Rep. No. 196). In *Chisom v. Roemer*, 501 U.S. 380, 393-394 ns.20, 21, 395 n.22 (1991) (citing S. Rep. No. 417), and *Houston Lawyers' Association v. Attorney General of Texas*, 501 U.S. 419 (1991), the Court found that state appellate and trial court judges were "representatives" within the meaning of Section 2 based, *inter alia*, upon the 1982 Senate Report. Clearly, there is no basis for contending that the Section 2 incorporation argument fails because it relies primarily upon the Senate Report, App. 17a; the report is the authoritative source of construction of the Act.

The claim that the legislative history is not extensive also discounts the fact that the principal cosponsors of the 1982 amendments stated during the floor debates that Section 2 was to apply to preclearance. Because these members of Congress were sponsors and principal architects of the 1982 amendments, their views "deserv[e] to be accorded substantial weight." *NLRB v. Fruit Packers*, 377 U.S. 58, 66 (1964); *North Haven Board of Education v. Bell*, 456 U.S. 512, 527 (1982) (the statements of a sponsor of a bill "are an authoritative guide to the statute's construction"); *FEA v. Algonquin SNG, Inc.*, 426 U.S. 548, 564

(1976). Every time the issue was directly addressed – in the debates and in the Senate Report – the conclusion was that Section 2 was applicable to Section 5.[9]

E. Congress Did Amend the Voting Rights Act

The lower court also held that Congress did not intend to import Section 2 standards into Section 5 because it did not amend the latter statute. App. 20a. Congress did, however, amend the Voting Rights Act and provided that amended Section 2 was to apply to pre-clearance.

It is common for Congress to add a provision to an act and apply it to a second provision of the same act without changing the language of the second provision. For example, Congress enacted the Civil Rights Restoration Act of 1987 in response to *Grove City College v. Bell*, 465 U.S. 555 (1984),[10] to amend four pre-existing civil rights acts, *i.e.*, Title IX of the Education Amendments of 1972, 20 U.S.C. § 1681(a); Section 504 of the Rehabilitation Act of 1973, 29 U.S.C. § 794; the Age Discrimination Act of 1975, 42 U.S.C. § 6102; and, Title VI of the Civil Rights

---

[9] That the floor debate was limited is not surprising in view of the fact that Section 5 preclearance (as opposed to its duration) was not a very controversial issue. It was the amendment of Section 2 that absorbed the attention of Congress. Comm. Print (1986) at 4.

[10] *Grove City* held that discrimination in a "program or activity" of a college didn't subject the institution as a whole to the nondiscrimination provisions of Title IX of the Education Amendments of 1972, 20 U.S.C. § 1681(a).

Act of 1964, 42 U.S.C. § 2000d, and provide that discrimination was prohibited throughout entire institutions or agencies if any part received federal financial assistance. The Civil Rights Restoration Act did not, however, make any changes or add any language to the coverage or fund termination provisions of the pre-existing acts. S. Rep. No. 64, 100th Cong., 2d Sess. (1987). Moreover, in three of the four instances, amendment was accomplished by adding an entirely separate provision defining the term "program or activity" in a broad, institution-wide manner. Title IX was amended by 20 U.S.C. § 1687; the Age Discrimination Act was amended by 42 U.S.C. § 6107; and, Title VI was amended by 28 U.S.C. § 2000d-4. In only one instance was the statute creating the prohibition of discrimination itself amended, the Rehabilitation Act of 1973, 29 U.S.C. § 794(b).

Congress did the same thing when it enacted the 1982 amendments to the Voting Rights Act as it did when it passed the Civil Rights Restoration Act of 1987 amending the pre-existing civil rights statutes. It did not add new language to Section 5, but instead amended Section 2 and provided in the legislative history that Section 2 was to apply to preclearance. Given its broad authority to enforce the Fourteenth and Fifteenth Amendments by appropriate legislation, *South Carolina v. Katzenbach*, 383 U.S. 301, 326-27, 337 (1966), Congress did not exceed its powers in acting as it did.

F. Some Voting Changes Are Not Amenable to Analysis Under the Retrogression Standard

The argument that the anti-dilution standard of Section 2 does not apply to Section 5 does not take proper account of the fact that the effect of some voting changes is simply not amenable to analysis under a retrogression standard. A change from appointed to elected county commissioners, for example, would be covered by Section 5, *McCain v. Lybrand*, 465 U.S. 236, 250 n.17 (1984), *Horry County v. United States*, 449 F.Supp. 990, 995 (D.D.C. 1978), but it might be extremely difficult to determine the effect of such a change based upon a retrogression analysis. If the change were to at-large elections or single-member districts which fragmented the minority community and diluted its voting strength, would it nonetheless be entitled to preclearance if under the old system no minorities had been appointed to the commission, and there was no evidence that the change was racially motivated? The difficulty with retrogression analysis under these circumstances is that there is no pre-existing electoral system which can be used as a basis for comparing the effect of the new practice.

In other cases, there may be no practice or procedure *at all* that can be used as a benchmark for determining retrogression, *e.g.*, where a newly incorporated college district or municipality selects for the first time a method of conducting elections. *See* 28 C.F.R. § 51.54(b)(4). Under the circumstances, a voting plan which "fairly reflects" the strength of the minority community as it exists would furnish the logical and appropriate basis for comparison. *City of Richmond v. United States*, 422 U.S. 358, 378 (1975).

The application of Section 2 to preclearance would not cause a major or disruptive change in the administration of Section 5. Indeed, the Attorney General has administered the statute in such a manner in the past. The purpose or effect standards would continue to apply and dispose of the vast majority of submitted voting changes. According to the Attorney General, during his review of the thousands of voting changes submitted since the 1982 amendments, "only a handful . . . even arguably presented th[e] possibility" of being disposed of on Section 2 grounds. 52 Fed. Reg. 486-90 (1987) (comments to 28 C.F.R. § 51). In those relatively rare – but important – cases where a retrogression analysis was not applicable, or where a voting change which did not have a discriminatory purpose or effect nevertheless "resulted" in discrimination, an anti-dilution standard should apply.

It would make very little sense from the standpoint of public policy and conserving judicial resources to allow violations of one section of the Voting Rights Act (Section 2) to be approved by another (Section 5). Such a paradigm would undercut the enforcement mechanisms and the overall purpose of the Act.[11] The evidence shows that Congress intended to correct the anomalies of *Beer* by applying Section 2 to Section 5 preclearance.

---

[11] *See Sheffield*, 435 U.S. at 136 ("The only recourse available would be the one Congress found to be unsatisfactory: repeated litigation").

CONCLUSION

For the foregoing reasons, the decision below should be reversed.

Respectfully submitted,

LAUGHLIN MCDONALD
NEIL BRADLEY
MAHA S. ZAKI
American Civil Liberties
Union Foundation
44 Forsyth St. NW – Suite 202
Atlanta, GA 30303
(404) 523-2721

STEVEN R. SHAPIRO
American Civil Liberties
Union Foundation
132 West 43rd Street
New York, NY 10036
(212) 944-9800

ELAINE R. JONES
Director-Counsel
NORMAN J. CHACHKIN
JACQUELINE BERRIEN
NAACP Legal Defense and
Educational Fund, Inc.
99 Hudson Street
New York, NY 10013
(212) 219-1900

Supreme Court, U.S.
FILED
AUG 15 1996
CLERK

(7) (8)

Nos. 95-1508 & 95-1455

In the Supreme Court of the United States
October Term, 1995

GEORGE PRICE, *et al.*,
Appellants,
v.
BOSSIER PARISH SCHOOL BOARD,
Appellee.

and

JANET RENO, Attorney General
of the United States,
Appellant,
v.
BOSSIER PARISH SCHOOL BOARD,
Appellee.

On Appeal from the United States District Court for the District of Columbia

BRIEF AMICUS CURIAE OF PACIFIC LEGAL FOUNDATION IN SUPPORT OF APPELLEE

SHARON L. BROWNE
* DEBORAH J. LA FETRA
*Counsel of Record
Pacific Legal Foundation
2151 River Plaza Drive,
Suite 305
Sacramento, California 95833
Telephone: (916) 641-8888
Attorneys for Amicus Curiae

35 pp

BEST AVAILABLE COPY

TABLE OF CONTENTS

Page

IDENTITY AND INTEREST OF AMICUS CURIAE 1

OPINION BELOW 3

STATEMENT OF THE CASE 3

SUMMARY OF ARGUMENT 5

ARGUMENT 6

I. THE FEDERALISM COSTS ALREADY EXACTED BY SECTION 5 SHOULD NOT BE EXACERBATED BY EXPANDING A SECTION 5 PRECLEARANCE PROCEEDING TO INCLUDE SECTION 2 LITIGATION 6

II. NEITHER SECTION 2 NOR EVIDENCE OF AN ALLEGED SECTION 2 VIOLATION MAY BE IMPORTED INTO A SECTION 5 PRECLEARANCE PROCEEDING 12

A. Section 2 May Not Be Imported into Section 5 14

B. Evidence of an Alleged Section 2 Violation May Not Be Used to Demonstrate Discriminatory Purpose in a Section 5 Preclearance Proceeding . . . 17

Page

1. Failure to Maximize Majority-Minority District Does Not Demonstrate Discriminatory Purpose 17

2. To the Extent Arizona v. Reno (Relied on by Appellants and the Dissent Below) Permits Inclusion of Evidence of an Alleged Section 2 Violation in a Section 5 Preclearance Proceeding, Arizona v. Reno Should Be Disapproved 23

CONCLUSION 27

TABLE OF AUTHORITIES CITED

Page

CASES

Abrams v. Johnson, Docket Nos. 95-1425, 95-1460 2

Allen v. State Board of Elections, 393 U.S. 544 (1969) 10-11

Arizona v. Reno, 887 F. Supp. 318 (D.D.C. 1995), appeal dismissed, __ U.S. __, 116 S. Ct. 1037 (1996) 23-24,26

Beer v. United States, 425 U.S. 130 (1976) 4,6,12-16,25-26

Bernal v. Fainter, 467 U.S. 216 (1984) 10

Boyd v. Thayer, 143 U.S. 135 (1892) 10

Bush v. Vera, __ U.S. __, 116 S. Ct. 1941 (1996) 2,13

Chisom v. Roemer, 501 U.S. 380 (1991) 2

City of Lockhart v. United States, 460 U.S. 125 (1983) 26

City of Mobile v. Bolden, 446 U.S. 55 (1980) 12

City of Pleasant Grove v. United States, 479 U.S. 462 (1987) 17

Page

City of Richmond v. United States,
422 U.S. 358 (1975) 17-18

City of Rome v. United States,
446 U.S. 156 (1980) 7

Conroy v. Aniskoff, 507 U.S. 511 (1993) 17

Georgia v. Reno, 881 F. Supp. 7 (D.D.C. 1995) 9

Georgia v. United States, 411 U.S. 526 (1973) 8

Gregory v. Ashcroft, 501 U.S. 452 (1991) 9-10

Holder v. Hall, __ U.S. __, 114 S. Ct.
2581 (1994) 14

Johnson v. De Grandy, __ U.S. __,
114 S. Ct. 2647 (1994) 20

League of United Latin American
Citizens v. Attorney General of Texas,
501 U.S. 419 (1991) 2

Lopez v. Monterey County, California,
Docket No. 95-1201 2

Louisiana v. Hays, __ U.S. __, 115 S. Ct.
2431 (1995) 2

McCain v. Lybrand, 465 U.S. 236 (1984) 11

Miller v. Johnson, __U.S. __,
115 S.Ct.2475 (1995) 13,20-22,24,26

Page

New York v. United States,
505 U.S. 144 (1992) 6,9-11

New York v. United States, 874 F. Supp.
394 (D.D.C. 1994) 23,25-26

Oregon v. Mitchell, 400 U.S. 112 (1970) 10

Personnel Administrator v. Feeney,
442 U.S. 256 (1979). 17,24

Pierce v. Underwood, 487 U.S. 552 (1988) 14-16

Presley v. Etowah County Commission,
502 U.S. 491 (1992) 10-11,13

Shaw v. Hunt, __ U.S. __, 116 S. Ct.
1894 (1996) 2,21-22

South Carolina v. Katzenbach,
383 U.S. 301 (1966) 7-11

Thornburg v. Gingles, 478 U.S. 30 (1986) 12

United States v. Board of Commissioners,
435 U.S. 110 (1978) 6

Village of Arlington Heights v.
Metropolitan Housing Development Corp.,
429 U.S. 252 (1977) 23

Washington v. Davis, 425 U.S. 229 (1976) 17

RULES

Supreme Court Rule 37 1

Page

STATUTES

28 U.S.C. § 2412 14

42 U.S.C. § 1973 5

§ 1973b 15

§ 1973b(a)(1)(F)(I) 12

§ 1973c 3-4,11

UNITED STATES CONSTITUTION

Article 4, Section 4 9

Tenth Amendment 6-7,9

Fourteenth Amendment 26

Fifteenth Amendment 7,19

MISCELLANEOUS

Blumstein, Shaw v. Reno and Miller v. Johnson: Where We Are and Where We Are Headed, 26 Cumb. L. Rev. 503 (1995) 18

Butler, Affirmative Racial Gerrymandering: Fair Representation for Minorities or a Dangerous Recognition of Group Rights?, 26 Rutgers L.J. 595 (1995) 18

Page

Carter, Mere Voting: Presley v. Etowah County Commission and the Voting Rights Act of 1965, 71 N.C. L. Rev. 569 (1993) 18-20

H. R. Rep. No. 196, 94th Cong. 1st Sess 57 (1975) 26

Low-Level Radioactive Waste Policy Amendments Act of 1985, Pub. L. No. 99-240, 99 Stat. 1842 (1985) (codified at 42 U.S.C. § 2021b et seq.) 9

Merritt, Republican Governments and Autonomous States: A New Role for the Guarantee Clause, 65 U. Colo. L. Rev. 815 (1994) 9

Note, Recent Case: Arizona v. Reno, 109 Harv. L. Rev. 681 (1996) 23-26

S. Rep. No. 417, 97th Cong., 2d Sess. 12 (1982) . . . 15

Walbert, Georgia's Experience with the Voting Rights Act: Past, Present, and Future, 44 Emory L.J. 979 (1995) 17

Nos. 95-1508 & 95-1455

In the Supreme Court of the United States
October Term, 1995

GEORGE PRICE, *et al.*,
Appellants,
v.
BOSSIER PARISH SCHOOL BOARD,
Appellee,
and

JANET RENO, Attorney General
of the United States,
Appellant,
v.
BOSSIER PARISH SCHOOL BOARD,
Appellee.

On Appeal from the United States District Court for the District of Columbia

BRIEF AMICUS CURIAE OF PACIFIC LEGAL FOUNDATION IN SUPPORT OF APPELLEE

IDENTITY AND INTEREST OF AMICUS CURIAE

Pursuant to Supreme Court Rule 37, Pacific Legal Foundation (PLF) respectfully submits this brief amicus

curiae in support of appellee, Bossier Parish School Board. All parties have consented to the filing of this amicus brief. The letters of consent have been lodged with the Clerk of this Court.

Pacific Legal Foundation is a nonprofit, tax-exempt corporation organized under the laws of the State of California for the purpose of engaging in litigation in matters affecting the public interest. Policy is set by a Board of Trustees composed of concerned citizens, many of whom are attorneys. PLF's Board evaluates the merits of any contemplated legal action and authorizes such legal action only where the Foundation's position has broad support within the general community. PLF's Board has authorized the filing of an amicus curiae brief in this matter.

Pacific Legal Foundation is submitting this brief because it believes its public policy perspective and litigation experience in the voting rights arena will provide an additional viewpoint with respect to the issues presented. PLF attorneys have participated in numerous other Voting Rights Act cases before this Court including *Lopez v. Monterey County, California*, Docket No. 95-1201; *Abrams v. Johnson*, Docket Nos. 95-1425, 95-1460; *Bush v. Vera*, __ U.S. __, 116 S. Ct. 1941 (1996); *Shaw v. Hunt*, __ U.S. __, 116 S. Ct. 1894 (1996); *Louisiana v. Hays*, __ U.S. __, 115 S. Ct. 2431 (1995); *Chisom v. Roemer*, 501 U.S. 380 (1991); and *League of United Latin American Citizens v. Attorney General of Texas*, 501 U.S. 419 (1991).

PLF believes that racial classifications by government, both in the voting rights context and otherwise, are inherently suspect and, absent extraordinary circumstances, unconstitutional. In this case, the appellants seek to use the Voting Rights Act as a vehicle to promote racial quotas in elective office. PLF believes that this attempted means, which

implicates critical federalism concerns, must be emphatically rejected by this Court.

OPINION BELOW

The opinion of the United States District Court for the District of Columbia, holding that an inquiry based on Section 2 of the Voting Rights Act cannot be imported into a Section 5 preclearance proceeding, is reported at 907 F. Supp. 434 (D.D.C. 1995).

STATEMENT OF THE CASE

The Bossier Parish School Board (School Board or Board), located in northwestern Louisiana, sought preclearance of a redistricting plan under Section 5 of the Voting Rights Act, 42 U.S.C. § 1973c. *Bossier Parish School Board v. Reno*, 907 F. Supp. at 437. The School Board needed to redistrict because the 1990 census showed markedly divergent populations among the Board's 12 districts. Members of the School Board were elected by majority vote. In the School Board's history, no black candidate had been elected to membership. However, the Board did appoint a black member to a vacant seat in 1992. *Id.* at 437-38.

The School Board initially approached the governing body of the parish, known as the "Police Jury" to see if they could jointly redistrict. The Police Jury also has 12 members. The Police Jury declined to work with the School Board, however, because of different incumbency concerns. *Id.* at 438. The Police Jury drew up a plan which was subsequently precleared by the Department of Justice (DOJ) and went into effect. The School Board then hired the same

cartographer and went to work on its own plan. *Id.* at 438. Meanwhile, the local National Association for the Advancement of Colored People (NAACP) wanted to become involved in the process and specifically said that it would dispute any plan that did not provide for majority-black districts. *Id.* The NAACP drew up its own plan containing two majority-black districts and presented it to the School Board. However, the Parish District Attorney dismissed the NAACP plan because it required splitting 46 voting precincts in violation of Louisiana law. *Id.* at 438.

In the midst of this controversy, the School Board decided to sidestep further escalation by adopting the Police Jury plan as its own. *Id.* at 439. The School Board submitted the plan to the DOJ for preclearance. Despite the fact that the DOJ precleared the identical plan for the Police Jury, the DOJ refused to preclear the School Board plan on the basis of "new information," namely, the existence of the NAACP plan, which the DOJ preferred. *Id.*

For a political subdivision subject to Section 5 to obtain preclearance of a voting change, it must prove that the proposed change "does not have the purpose and will not have the effect of denying or abridging the right to vote on account of race or color." 42 U.S.C. § 1973c. The "effect" prong of Section 5 requires a showing of retrogression. *Beer v. United States*, 425 U.S. 130, 141 (1976). All parties in this case agree that there is no retrogressive effect from the School Board's proposed redistricting plan. *Bossier Parish*, 907 F. Supp. at 440. Thus, the School Board must demonstrate that the redistricting plan was enacted without a discriminatory purpose.

The School Board argued it had several legitimate purposes: to avoid controversy, to keep precincts intact, to adhere to traditional districting principles, and to avoid racial gerrymandering. *Id.* The DOJ, on the other hand, argued that preclearance should be denied because either (1) the

redistricting plan itself violates Section 2 of the Voting Rights Act; or (2) a Section 2 violation is evidence of discriminatory purpose. *Id.*[1]

The District Court in this case rejected the DOJ's attempt to merge these two very different sections--Section 2 and Section 5--of the Voting Rights Act. *Id.* at 440-41. The DOJ appealed to this Court and the Court noted probable jurisdiction on June 3, 1996.

SUMMARY OF ARGUMENT

Appellants in this case seek to merge Sections 2 and 5 of the Voting Rights Act. First, appellants seek direct importation of Section 2, a broad-ranging statute designed to combat discriminatory actions relating to participation in the political process, into Section 5, the preclearance provision for certain covered jurisdictions. Such importation is directly contrary to the language and intent of the Voting Rights Act, including the 1982 amendments. For this reason, every court which has considered this argument has rejected it. Next, appellants argue that even if Section 2 cannot be directly imported into Section 5, then evidence of a Section 2 violation may still appropriately be used to deny preclearance. In this way, appellants seek the same result indirectly as they do directly; and for the same reasons, this argument should be rejected. Moreover, the merger of Section 2 and Section 5 (whether direct or indirect) would

---

[1]Section 2 of the Voting Rights Act provides, in part, that "no voting qualification or prerequisite to voting, or standards, practice, or procedure shall be imposed or applied by any state or political subdivision in a manner which results in a denial or abridgment of the right of any citizen of the United States to vote on account of race or color." 42 U.S.C. § 1973.

exact severe costs on the federalism doctrine which forms the basis for American governance.

ARGUMENT

I

THE FEDERALISM COSTS ALREADY EXACTED BY SECTION 5 SHOULD NOT BE EXACERBATED BY EXPANDING A SECTION 5 PRECLEARANCE PROCEEDING TO INCLUDE SECTION 2 LITIGATION

A statute will not be construed to undercut state authority unless the congressional enactment clearly and expressly states that purpose. A state's sovereignty, consistent with the Tenth Amendment,[2] must be recognized in determining the extent to which federal courts and the DOJ will be permitted to restructure election changes made without discrimination. Federalism concerns consistent with the Tenth Amendment have been formalized by the rule that a statute will not be construed to undercut state authority unless there is a showing of the "unambiguous intent" of Congress to effect the purpose. *New York v. United States*, 505 U.S. 144, 171 (1992). "In traditionally sensitive areas, such as legislation affecting the federal balance, the requirement of a clear statement assures that the legislature has in fact faced, and intended to bring into issue, the critical matters involved in the judicial decision." *Id.* Even as

[2]The Tenth Amendment provides: "The powers not delegated to the United States by the Constitution, nor prohibited by it to the states, are reserved to the states respectively, or to the people. U.S. Const. Amend. X.

construed in *Beer*, 425 U.S. at 141, Section 5 is indisputably a serious intrusion into the normal federal-state balance of authority. *See, e.g., United States v. Board of Commissioners*, 435 U.S. 110, 141 (1978) (Stevens, J., dissenting). To go beyond the retrogression limits of the freezing remedy permitted by *Beer* would be a huge extension of Section 5, an extension for which there is a glaring absence of the necessary clear statement from Congress.

This Court first considered the constitutionality of Section 5 in *South Carolina v. Katzenbach*, 383 U.S. 301 (1966). In that case, South Carolina challenged Congress' authority to require federal approval of proposed state laws, claiming that Section 5 violated the Tenth Amendment by encroaching on powers reserved to the states. *Id.* at 323. The Court responded that the states' power to violate the Fifteenth Amendment is nowhere protected in the Constitution: "The gist of the matter is that the Fifteenth Amendment supersedes contrary exertions of state power." *Id.* at 325; *see also City of Rome v. United States*, 446 U.S. 156, 202 (1980) (Powell, J., dissenting) ("[p]reclearance [is] a prophylactic measure based on the remedial power of Congress to enforce the Fifteenth Amendment"). In dissent, Justice Black's primary constitutional objection was that through the Act's preclearance requirement the United States was usurping power from the states in flagrant violation of the Tenth Amendment. *See Katzenbach*, 383 U.S. at 358-61 (Black, J., concurring in part and dissenting in part). By requiring federal approval before a state can enforce its laws, he maintained, Section 5 "so distorts our constitutional structure of government as to render any distinction drawn in the Constitution between state and federal power almost meaningless." *Id.* at 358 (Black, J., concurring in part and dissenting in part). Congress' power to enforce the Fifteenth Amendment, he believed, does not encompass such a shift of power from the states to the federal government. *Id.*

at 357-58 (Black, J., concurring in part and dissenting in part). Justice Black's dissent confronted this tension in stark and explicit terms:

> I cannot help but believe that the inevitable effect of any such law which forces any one of the States to entreat federal authorities in faraway places for approval of local laws before they can become effective is to create the impression that the State or States treated in this way are little more than conquered provinces.

Id. at 359-60 (Black, J., concurring and dissenting).

The court below recognized that this Court's decision upholding Section 5 in *Katzenbach* was a

> "necessary and constitutional response to some states" "extraordinary stratagem[s] of contriving new rules of various kinds for the sole purpose of perpetuating voting discrimination in the face of adverse federal court decrees." ... But [its] belief in *Katzenbach* that the federalism costs exacted by Sec. 5 preclearance could be justified by those extraordinary circumstances does not mean they can be justified in the circumstances of this case.

Bossier Parish, 907 F. Supp. at 444, citing *Miller v. Johnson*, __ U.S. __, 115 S. Ct. 2475, 2493 (1995)) (quoting *Katzenbach*, 383 U.S. at 335). The court below further noted that the federalism costs of Section 5 by itself have been noted throughout its history. *See Georgia v. United States*, 411 U.S. 526, 545 (1973) (Powell, J., dissenting) ("It is indeed a serious intrusion, incompatible with the basic structure of our system, for federal authorities to compel a

State to submit its legislation for advance review"); *Katzenbach*, 383 U.S. at 359-60 (Black, J., dissenting in part) ("[Section 5] gives federal officials power to veto state laws they do not like ... in direct conflict with the clear command of our Constitution that '[t]he United States shall guarantee to every State in this Union a Republican Form of Government'");[3] *Georgia v. Reno*, 881 F. Supp. 7, 13 n.8 (D.D.C. 1995) (noting that the "extraordinary nature of section 5" argued against importing Section 2 into Section 5). Although *Miller* makes no explicit reference to the injection of Section 2 into Section 5, the import of the opinion on this issue is clear. So long as the standard for the "effect" prong of Section 5 remains "nonretrogression," the only way for the DOJ to require the creation of additional majority-black districts before preclearance will be granted is to import the standards of Section 2 into the Section 5 preclearance process. *Bossier Parish*, 907 F. Supp. at 444-45 and n.10.

The Tenth Amendment concerns may be analyzed under this Court's recent revival of Tenth Amendment jurisprudence in analogous situations. In *Gregory v. Ashcroft*, 501 U.S. 452 (1991), for example, this Court relied heavily on the sanctity of state sovereignty in refusing to enforce a federal statute in conflict with a mandatory retirement law for judges. In *New York v. United States*, 505 U.S. 144 (1992), this Court struck down that part of the Low-Level Radioactive Waste Policy Amendments Act of 1985, Pub. L. No. 99-240, 99 Stat. 1842 (1985) (codified at

---

[3]One commentator expands on this idea that intrusion into state election laws may deprive those states of a guaranteed republican form of government under Article IV, Section 4, of the United States Constitution--the Guarantee Clause. *See generally* Merritt, *Republican Governments and Autonomous States: A New Role for the Guarantee Clause*, 65 U. COLO. L. REV. 815 (1994).

42 U.S.C. § 2021b, *et seq.*), requiring states either to regulate the disposal of low-level radioactive waste according to Congress' instructions or accept ownership of (and liability for) it. *New York*, 505 U.S. at 149. This Court held that the statute would unconstitutionally force the states to implement legislation enacted by Congress. *Id.* at 188. Using the classifying language of the Voting Rights Act, this Court added, in dicta, that "[s]tates are not mere political subdivisions of the United States." *Id.* Although not doubting Congress' power under the Supremacy Clause to legislate in areas of state law, *Gregory*, 501 U.S. at 457, the Court emphasized that the statutory language must make Congress' intention to do so "unmistakably clear." *Id.* at 460.

The Court echoed Justice Black's states'-rights concerns in *Katzenbach* by reiterating that "[j]ust as 'the Framers of the Constitution intended the States to keep for themselves, as provided in the Tenth Amendment, the power to regulate elections,'" *Gregory*, 501 U.S. at 461-62 (quoting *Oregon v. Mitchell*, 400 U.S. 112, 124-25 (1970)), so also "[e]ach State has the power to prescribe the qualifications of its officers and the manner in which they shall be chosen." *Id.* at 462 (quoting *Boyd v. Thayer*, 143 U.S. 135, 161 (1892)). The mandatory retirement law for judges did not involve voting per se, but did affect the prerequisites to holding state office, as in *Allen v. State Board of Elections*, 393 U.S. 544, 570 (1969). Such electoral authority, the Court said, "lies at 'the heart of representative government.'" *Gregory*, 501 U.S. at 462 (quoting *Bernal v. Fainter*, 467 U.S. 216, 221 (1984)). *Gregory*, in a different context, conveys essentially the same constitutional message as Justice Black's in *Katzenbach*, 383 U.S. at 358-62 (Black, J., concurring in part and dissenting in part). Thus, there is a strong suggestion that *Presley v. Etowah County Commission*, 502 U.S. 491 (1992), decided about six months later, was informed by many of the same concerns for federalism set forth in detail in *Gregory*. Carter, *Mere Voting: Presley v.*

Etowah County Commission and the Voting Rights Act of 1965, 71 N.C. L. REV. 569, 591-93 (1993). As this Court stated, "[i]f federalism is to operate as a practical system of governance and not a mere poetic ideal, the States must be allowed both predictability and efficiency in structuring their governments." *Presley*, 502 U.S. at 510.

Consideration of the likely practical consequences of merging Section 2 and Section 5 demonstrates the magnitude of the intrusion on state autonomy. Because this Court has interpreted what qualifies as a voting "change" very broadly, *see Allen*, 393 U.S. at 563-71, whenever a covered jurisdiction desires to make even a purely administrative change in its voting laws, it would face the daunting prospect of defending its entire electoral system as nondiscriminatory if it is to avoid an inference of discriminatory purpose. Moreover, unlike a Section 2 proceeding in which the plaintiff bears the burden of proof, *see New York v. United States*, 874 F. Supp. at 397, and which may be litigated in a local federal forum, a Section 5 proceeding imposes considerable procedural disadvantages on the state, including the burden of proving that there is no discriminatory effect or purpose, *see Katzenbach*, 383 U.S. at 335,[4] and the inconvenience and expense of litigating in the often distant District of Columbia forum. *See* 42 U.S.C. § 1973c. The prospect of litigation under such terms may well paralyze the state's ability to address routine administrative problems. Consequently, a merger of Sections 2 and 5 would enable the DOJ to wield its preclearance power as a sword to coerce ameliorative steps by a state, rather than as the intended shield against retrogression in minority exercise of the ballot. *See, e.g., McCain v. Lybrand*, 465 U.S. 236, 246 (1984)

---

[4]The court below noted the anomolous result where a voting change is conceded to have no retrogressive effect: the state must prove that when "it did nothing bad, it did so with a non-bad motive." *Bossier Parish*, 907 F. Supp. at 446 n.13.

(the Act must be "interpreted in light of its prophylactic purpose and the historical experience which it reflects").

II

NEITHER SECTION 2 NOR EVIDENCE OF AN ALLEGED SECTION 2 VIOLATION MAY BE IMPORTED INTO A SECTION 5 PRECLEARANCE PROCEEDING

Congress amended Section 2 of the Voting Rights Act to address this Court's decision in *City of Mobile v. Bolden*, 446 U.S. 55 (1980), which held that evidence of disproportionate impact was not sufficient to prove a violation of the Fifteenth Amendment or, by extension, Section 2 of the Voting Rights Act. *See Thornburg v. Gingles*, 478 U.S. 30, 35 (1986). To ensure that any voting practice that denied minorities the equal opportunity to participate in the political process could be challenged, regardless of the intent behind its enactment, Congress made major changes to the text of Section 2 which make it clear that plaintiffs do not have to demonstrate purposeful discrimination to prevail. *See id.* at 42-46. Congress also amended the language of Section 4 to incorporate this standard into the bail-out provisions. *See* 42 U.S.C.§ 1973b(a)(1)(F)(I).

At the same time, the temporary legislation contained in Section 5 was extended, but without substantive changes to the statutory language. The DOJ's argument that Section 5 was expanded in similar fashion to Section 2 is meritless. Section 5 was not changed substantively in any way. If Congress intended to revise Section 5 to permit review of electoral practices regardless of when enacted, and regardless of retrogression, the wording of Section 5 surely would have been changed in 1982. That is particularly true in light of the unequivocal construction given to Section 5 in *Beer v. United States*, 425 U.S. at 130.

In *Beer*, the city of New Orleans sought preclearance of a reapportionment plan that would have increased black voting strength. *Id.* at 135-36. The DOJ refused to preclear the plan on the grounds that the new reapportionment was nonetheless discriminatory because it diluted black votes. *Id.* at 136. This Court held that if a proposed change augments minority voter participation, even though it may still have some discriminatory effect, it cannot violate Section 5. *Id.* at 141. Changes are judged under Section 5 relative to what they replace and not in absolute terms. *Id.* at 141. Thus, Section 5 applies only to changes that would lead to a relative retrogression in minority voting. *Id.* Of course, this rule holds true only so long as the proposed change does not otherwise violate the Constitution. *Id.* In *Presley v. Etowah County Commission*, 502 U.S. 491, this Court held that while great deference ordinarily is afforded to the Attorney General's interpretation of the Voting Rights Act, there are limits to that deference. *Presley*, 502 U.S. at 508 ("[d]eference does not mean acquiescence"). Only when congressional intent is unsettled does this Court owe deference to the Attorney General's construction. *Id.* Since this Court found Section 5 unambiguous in limiting its coverage to rules governing voting, it felt no compulsion to defer to the administrative position. *Id.* at 509. Justice Kennedy concluded the Court's opinion by emphasizing that the Voting Rights Act was drafted to fight "specific evils" and should not be stretched beyond recognition to cover all manner and method of discrimination. *Id.*

In *Bush v. Vera*, 116 S. Ct. 1941, decided this Term, this Court again forthrightly stated the limited purpose of Section 5: "§ 5 has a limited substantive goal: 'to insure that no voting-procedure changes would be made that would lead to a retrogression in the position of racial minorities with respect to their effective exercise of the electoral franchise.'" *Bush*, 116 S. Ct. at 1949 (citing *Miller*, 115 S. Ct. at 2483) (quoting *Beer v. United States*, 425 U.S.

130, 141 (1976)). In *Bush*, this Court rejected the argument that seeks to justify "not maintenance, but substantial augmentation, of the African-American population percentage in [the district]." *Bush*, 116 S. Ct. at 1950. Thus, this Court's interpretation of the purpose and scope of Section 5 remained unchanged up to and including decisions rendered this Term. Yet, the DOJ continues to advocate an interpretation of Section 5 that extends far beyond permissible boundaries.

A. Section 2 May Not Be Imported into Section 5

Noting the differences in "structure, purpose, and application" between Sections 2 and 5 (*Bossier Parish*, 907 F. Supp. at 442 (citing *Holder v. Hall*, __ U.S. __, 114 S. Ct. 2581, 2587 (1994))), the court below found that it had no cause to delve into legislative history as an interpretive aid. *Id.* at 442. Nonetheless, common sense and normal rules of statutory construction fully comport with the District Court's decision. Congress does not change a statute's meaning when it does not amend the statute. An analogous argument to that presented by the DOJ in this case arose in *Pierce v. Underwood*, 487 U.S. 552, 567-68 (1988). *Pierce* involved the Equal Access to Justice Act (EAJA), 28 U.S.C. § 2412, which allows fee awards against the United States in certain cases. Like Section 5, that provision of law was originally enacted as temporary legislation. The Act was extended in 1985 but, before its extension, several lower federal courts had construed EAJA to permit an award of fees only in those cases where the government's conduct had not been "reasonable." When the EAJA was extended in 1985, the provision at issue was unchanged, but a committee report that accompanied the extension legislation stated that the government must show that its conduct was "more than merely reasonable" to avoid attorneys' fees. *Pierce*, 487 U.S. at 566. The plaintiffs in *Pierce* relied on this report in their unsuccessful attempt to invoke the higher standard.

The DOJ's contention that Section 2 should be imported into Section 5 is also based on legislative history. *Bossier Parish*, 907 F. Supp. at 441.[5] However, the Section 5 legislative history is even more attenuated than that at issue in *Pierce*. One footnote buried in the lengthy Senate Committee Report simply states: "[I]n light of the amendment to section 2, it is intended that a section 5 objection also follow if a new voting procedure itself so discriminates as to violate section 2." S. Rep. No. 417, 97th Cong., 2d Sess. 12 n.31 (1982). But, just as in *Pierce*, this passing comment in the legislative history is irrelevant in construing Section 5 because the language of Section 5 itself contained no change, much less the kind of change that would support a radical repeal of the *Beer* retrogression principle. This Court resolved the analogous situation in *Pierce* by holding that the extended, but unamended, terms

---

[5]The DOJ's infusion of Section 2 principles into the preclearance proceeding is obvious from the language in its letter of objection that the School Board "is not free to adopt a plan that unnecessarily limits the opportunity for minority voters to elect their candidates of choice," *Bossier Parish*, 907 F. Supp. at 439, and its letter of August 30, 1993: "[T]he proposed plan, adopted by the parish police jury and recommended by the school board's consultant, *would appear to provide no opportunity for black voters to elect a candidate of their choice* to the school board." *Id.* at 445 n.11 (emphasis in original). This language echoes the language of Section 2, which provides that a voting procedure has the prohibited result where "based on the totality of circumstances, it is shown that the political processes ... are not equally open to participation by members of a [protected] class ... in that its members have less opportunity than other members of the electorate to participate in the political process and to elect representatives of their choice." 42 U.S.C. § 1973b.

of the statute necessarily remained unchanged, and the later legislative history had no weight:

> (Quite obviously, reenacting precisely the same language would be a strange way to make a change.) This is not, it should be noted, a situation in which Congress reenacted a statute that had in fact been given a consistent judicial interpretation along the lines that the quoted Committee Report suggested. Such a reenactment, of course, generally includes the settled judicial interpretation .... Even in the ordinary situation, the 1985 House Report would not suffice to fix the meaning of language which that reporting Committee did not even draft. Much less are we willing to accord it such force in the present case, since only the clearest indication of congressional command would persuade us to adopt a test so out of accord with prior usage.

Pierce, 487 U.S. at 567-68 (citations omitted). In this case, the 1982 amendments to the Voting Rights Act reinforced the validity of the *Beer* retrogression standard because of the presumption that the congressional reenactment of Section 5, without change, constituted congressional approval of prior judicial interpretations.

In *Pierce*, this Court also rejected the 1985 committee report because such a later report is irrelevant in interpreting an earlier statute. "[I]t is the function of the courts and not the Legislature, much less a Committee of one House of the Legislature, to say what an enacted statute means. *Id.* at 566-67. In this case, the 1982 Senate Report is similarly irrelevant because (1) it is a meaningless interpretation of the language of Section 5 as originally enacted in 1965, and (2) there was no Section 5 language that the report could be

explaining. Moreover, the sheer scope of the change the DOJ would impart from Footnote 31 of the Senate Report is much greater than the minor change advocated in *Pierce*. Rather than acting as a freezing remedy, the statute would empower the DOJ with authority to review the propriety of every electoral practice of every covered jurisdiction, no matter when enacted. Such an interpretation bears no relationship to the purpose of Section 5. Walbert, *Georgia's Experience with the Voting Rights Act: Past, Present, and Future*, 44 EMORY L.J. 979, 1000-01 (1995) (Walbert). In fact, the DOJ's misuse of legislative history seems a prime example of Justice Scalia's concern in *Conroy v. Aniskoff*, 507 U.S. 511, 519 (1993) (Scalia, J., concurring in the judgment), that "legislative history [is] the equivalent of entering a crowded cocktail party and looking over the heads of the guests for one's friends." The court below correctly refused to endorse the DOJ's theory.

B. Evidence of an Alleged Section 2 Violation May Not Be Used to Demonstrate Discriminatory Purpose in a Section 5 Preclearance Proceeding

1. Failure to Maximize Majority-Minority Districts Does Not Demonstrate Discriminatory Purpose

The DOJ's secondary argument, assuming that this Court declines to import Section 2 into Section 5, is that evidence of a Section 2 violation should be used as evidence of discriminatory purpose under Section 5. *Bossier Parish*, 907 F. Supp. at 445. The purpose prong of Section 5 requires the denial of preclearance if there is a constitutional violation. The purposeful discrimination component of Section 5 is coextensive with the constitutional standard as described in *Washington v. Davis*, 425 U.S. 229 (1976), and *Personnel Administrator v. Feeney*, 442 U.S. 256 (1979). A covered jurisdiction cannot purposefully discriminate on the basis of race, even if there is no adverse effect on blacks as a group. *City of Pleasant Grove v. United States*, 479 U.S.

462, 471 (1987); *City of Richmond v. United States*, 422 U.S. 358, 378-79 (1975). Moreover, the failure of a covered jurisdiction to maximize the number of black-majority districts, by itself, does not support an inference of or otherwise establish a case of purposeful discrimination. States are perfectly free to use other legitimate apportionment criteria as long as they do not rely on race. Blumstein, *Shaw v. Reno and Miller v. Johnson: Where We Are and Where We Are Headed*, 26 CUMB. L. REV. 503, 510 (1995) (Blumstein).

The conclusion that a state has not carried its burden of proof on the intent issue may be justifiable if a state's plan fails to recognize concentrations of minority voters that naturally produce majority black districts under standard districting criteria. Butler, *Affirmative Racial Gerry-mandering: Fair Representation for Minorities or a Dangerous Recognition of Group Rights?*, 26 RUTGERS L.J. 595, 607 (1995) (Butler). During the Police Jury public hearing, in which the plan later adopted by both the Police Jury and the School Board was considered, the Police Jury stated that the black population of Bossier Parish was too far-flung to create a majority-minority district. *Bossier Parish*, 907 F. Supp. at 437. This seems to mesh with the fact that the NAACP plan containing two majority-minority districts required 46 precinct splits. *Id.* at 439. When no additional naturally occurring minority districts can be created, discriminatory intent does not appear to be a genuine basis for an objection.

As proof of discriminatory purpose, the probative value of the failure to adopt a plan more favorable to minorities should depend upon how closely the plan matches the state's districting objectives. Commentator Katherine Inglis Butler suggests the following standard: "Was the rejected plan so clearly superior in terms of the state's articulated districting objectives than the plan adopted as to suggest it was rejected for the purpose of avoiding a second majority black district?"

Butler, 26 RUTGERS L.J. at 607 n.41. Without such a standard, the argument becomes nothing more than "failure to adopt the most favorable plan means you intended to deprive blacks of a district," thereby making the de facto standard for Section 5 "maximization" of majority-minority districts. Butler, 26 RUTGERS L.J. at 609-10. In this case, the School Board only had two plans before it at the time it adopted the plan at issue in this case: the Police Jury plan and the NAACP plan. *Bossier Parish*, 907 F. Supp. at 440.

The primary reasons for adopting the Police Jury plan were that it was already precleared, thus avoiding controversy (the Board thought), and it would avoid splitting precincts (a violation of Louisiana law). The School Board demonstrated an interest in districts coterminous with Police Jury districts right after the 1990 census when the School Board asked the Police Jury to consider joint redistricting. *Bossier Parish*, 907 F. Supp. at 438. When the Police Jury rejected the School Board's proposal, the School Board hired the Policy Jury's cartographer who promptly informed the School Board that it could adopt the already precleared Police Jury plan. *Id.* Thus, the idea of using the Police Jury plan did not arise in response to the increasing controversy generated by the NAACP's demands for black majority-minority districts. *See id.* at 438 (noting that the Police Jury plan was first proposed by a School Board member in September, 1991, well before the NAACP expressed its desire to become involved in the process in March, 1992).

It is undoubtedly true that the Police Jury plan is not optimal for the School Board. *See Bossier Parish*, 907 F. Supp. at 458 (Kessler, J., dissenting) (identifying shortcomings related to traditional districting principles). However, the Constitution and the Voting Rights Act Section 5 preclearance procedures do not require adoption of the "best" possible plan. The sole requirement is that the plan comport with the Fifteenth Amendment. If the plan is as egregious as appellants assert, they will have the

opportunity to prove it in a Section 2 action. The court below expressly noted that its ruling would have no impact on a subsequent Section 2 action. *Id.* at 440.

The DOJ's apparent motivation in objecting to the very same plan it had precleared once before was to compel the state to gerrymander as many majority-minority districts as possible. The court below noted: "Defendant denied preclearance noting that the Board had adopted the Police Jury plan when it had before it a plan that provided for 2 of 12 (18%) majority-black districts in a parish with a voting-age population that is 17.6% black. The key to defendant's position in this case, similarly, is that the School Board has not provided an adequate explanation for adopting the precleared Police Jury plan when it had before it the NAACP plan." *Bossier Parish*, 907 F. Supp. at 450.

The DOJ's mission to impose as many minority districts as possible was clearly demonstrated by its intervention in *Johnson v. De Grandy*, __ U.S. __, 114 S. Ct. 2647 (1994). In *Johnson*, the DOJ argued that Section 2 required Florida to create as many majority Hispanic and black districts as possible, even though the state had provided both groups with proportional representation in areas affected by suit. *Id.* at 2659. This Court disagreed, holding that maximization was unnecessary under the law. *Id.* at 2651. To conclude that the state's first plan was discriminatory requires circular reasoning based on an invalid premise: The Act requires that a state take every opportunity to create majority black districts; every opportunity means any opportunity not expressly disallowed by federal law; because the state could have gerrymandered and did not, it therefore chose a plan which did not contain as many majority-minority districts as possible which is intentional discrimination against blacks. Butler, 26 RUTGERS L.J. at 608.

In *Miller*, this Court did not decide whether under the proper circumstances compliance with the Voting Rights

Act, on its own, could be a compelling interest. *Miller*, 115 S. Ct. at 2490-91 ("Whether or not in some cases compliance with the Voting Rights Act, standing alone, can provide a compelling interest independent of any interest in remedying past discrimination ...."). In *Shaw*, this Court once again declined to reach the question, in part because the additional North Carolina majority-black district drawn in that case was not required under a correct reading of Section 5. This Court held that *Miller* forecloses the argument that "failure to engage in the race-based districting would have violated [Section 5]." *Shaw v. Hunt*, 116 S. Ct. at 1903. In *Miller*, which involved an equal protection challenge to Georgia's Eleventh Congressional District, Georgia contended that its redistricting plan was necessary to meet the Justice Department's preclearance demands. The Justice Department had objected to a prior plan that created only two majority-minority districts. This Court held that the challenged congressional plan was not required by a correct reading of Section 5 and, therefore, compliance with that law could not justify race-based districting. *Miller*, 115 S. Ct. at 2491. ("[C]ompliance with federal antidiscrimination laws cannot justify race-based districting where the challenged district was not reasonably necessary under a constitutional reading and application of those laws.")

This Court reaffirmed the *Miller* holding in *Shaw*, stating that a plan, "'even if [it] fall[s] short of what might be accomplished in terms of increasing minority representation,'" "'cannot violate § 5 unless the new apportionment itself so discriminates on the basis of race or color as to violate the Constitution.'" *Shaw*, 116 S. Ct. at 1904 (citing *Miller*, 115 S. Ct. at 2492). As in *Miller* and *Shaw*, the United States in this case relies on the purpose prong of Section 5 to explain the Department's preclearance objections, alleging that Bossier Parish, for pretextual reasons, did not create majority-minority district. *Bossier Parish*, 907 F. Supp. at 440 (noting that "all parties agree that the School Board's proposed redistricting will not have

a retrogressive effect"). In *Miller* and *Shaw*, this Court found the Government's position "insupportable." *Shaw*, 116 S. Ct. at 1904; *Miller*, 115 S. Ct. at 2492. The court below properly relied on this Court's holding in this regard. *Bossier Parish*, 907 F. Supp. at 444. The DOJ's arguments are no more compelling now than they were in the prior cases. This Court has firmly held that a "State's policy of adhering to other districting principles instead of creating as many majority-minority districts as possible does not support an inference that the plan 'so discriminates on the basis of race or color as to violate the Constitution,' and thus cannot provide any basis under § 5 for the Justice Department's objection." *Shaw*, 116 S. Ct. at 1904 (citing *Miller*, 115 S. Ct. at 2492 (citations omitted)).

Despite being chastised by this Court in *Miller* and *Shaw* for pursuing its expansive reading of Sections 2 and 5, the DOJ continues in this case to pursue its same policy of maximizing the number of majority-black districts that it pursued in Georgia and North Carolina.

> We explained in Miller that this maximization policy is not properly grounded in § 5 and the Department's authority thereunder. *Miller*, 515 U.S., at __; 115 S. Ct., at 2493 ("In utilizing § 5 to require States to create majority-minority districts wherever possible, the Department of Justice expanded its authority under the statute beyond what Congress intended and we have upheld"). We again reject the Department's expansive interpretation of § 5. *Id.* at __; 115 S. Ct., at 2493. *Cf. Johnson v. De Grandy*, 512 U.S. ___; 114 S.C.. 2647, 2660 (1994) ("Failure to maximize cannot be the measure of § 2").

Shaw, 116 S. Ct. at 1904 (footnote omitted).

2. To the Extent Arizona v. Reno (Relied on by Appellants and the Dissent Below) Permits Inclusion of Evidence of an Alleged Section 2 Violation in a Section 5 Preclearance Proceeding, Arizona v. Reno Should Be Disapproved

In *Arizona v. Reno*, 887 F. Supp. 318 (D.D.C. 1995), *appeal dismissed*, 116 S. Ct. 1037 (1996), the court considered the 'purpose' prong of Section 5. Citing *Village of Arlington Heights v. Metropolitan Housing Development Corp.*, 429 U.S. 252, 267 (1977), the *Arizona* court held that "the historical background of the challenged decision," is one source of evidence relevant to a determination of discriminatory purpose. The *Arizona* court then held that the DOJ was entitled to reasonable discovery concerning "the extent to which historical discrimination nas affected and continues to affect the opportunity for Native Americans in Coconino and Navajo counties to participate in the political process and elect candidates of their choice." *Id.* at 323. The dissent below relied on this holding of the *Arizona* court. *Bossier Parish*, 907 F. Supp. at 455 n.4 (Kessler, J., dissenting). In particular, the *Arizona* court disagreed with the conclusion of a previous panel in *New York v. United States*, 874 F. Supp. 394 (D.D.C. 1994), that the decision to extend an existing discriminatory electoral scheme warrants an inference of discriminatory purpose only when the preexisting system is "blatantly" or "starkly" racist. *Arizona*, 887 F. Supp. at 322. *See* Note, *Recent Case: Arizona v. Reno*, 109 HARV. L. REV. 681, 683 (1996) (Note).

Although the court agreed that the mere extension of an existing discriminatory electoral system is an insufficient basis for inferring discriminatory purpose, it believed that a finding that the existing scheme was discriminatory would be one factor for a court to consider in the discriminatory purpose determination. *See Arizona*, 887 F. Supp. at 322-24. Moreover, because a showing that the existing system

violated Section 2 would not *conclusively* demonstrate that a discriminatory purpose motivated the extension of that system to the election of additional judges, the court rejected Arizona's argument that "permitting discovery into the historical background of its judicial election scheme and past discrimination against Native Americans" would be "tantamount to launching a section 2 proceeding challenging its existing electoral scheme under the guise of section 5." *Id.* at 323. The court thus denied summary judgment to Arizona on the issue of discriminatory purpose and simultaneously denied Arizona's alternative motion to limit discovery on the purpose issue "to the legislative and administrative history of the decisions to add [the] judgeships." *Id.* at 320.

By permitting consideration of the allegedly discriminatory nature of the existing electoral scheme, *Arizona v. Reno* expands the Section 5 inquiry beyond its authorized scope at the expense of state and local autonomy. *Arizona v. Reno* should be disapproved because it fails to acknowledge the congressional intent constraining the scope of a Section 5 proceeding. "The decision's failure to place appropriate limits on the preclearance inquiry raises serious federalism concerns because it allows the DOJ to use preclearance as a leverage point to coerce the ameliorative state action that a Section 5 proceeding cannot command." Note, 109 HARV. L. REV. at 683-84.

As this Court recently stated, to incur a finding that a discriminatory purpose motivated a change, the legislature must have "selected or reaffirmed a particular course of action at least in part 'because of,' not merely 'in spite of,'" its discriminatory effect. *Miller v. Johnson*, 115 S. Ct. at 2488 (quoting *Personnel Administrator v. Feeney*, 442 U.S. at 279). Thus, even if Arizona's existing scheme is discriminatory--and even if the legislators knew that fact--a discriminatory purpose was present only if the discriminatory nature of the system, and not the increased judicial work

load, motivated the legislature's decision to increase the number of judgeships. *See New York*, 874 F. Supp. at 401. That motivation can be determined by an inquiry confined to the administrative and legislative history of the decision to add more judges.

In essence, the DOJ's objective in the *Arizona* case was not to prevent discriminatory voting changes, but to use the preclearance proceeding as a convenient forum to force both counties to change their entire existing electoral scheme from an at-large system to single-member districts. As in *New York*, it was "quite clear that [the DOJ's] real complaint" was that the state's decision to create additional judgeships "was not a step towards ameliorating what [the DOJ] perceive[d] to be a discriminatory electoral system." *New York*, 874 F. Supp. at 401. However, in *Arizona*, as in this case, Section 2 provides the proper remedy for such a claim.

Arguably, allowing a court to consider evidence concerning the preexisting system exceeds the Section 5 inquiry envisioned by Congress even when the system is blatantly racist. An inference of discriminatory purpose, however, is warranted in such a context because the discriminatory effects of the system are obvious to legislators and the public alike, obviating the need for a wide-ranging and extensive evaluation of the preexisting system. *See New York*, 874 F. Supp. at 399 (discussing the inferences that would arise from the extension of a "whites only" voting scheme). The narrow exception carved out by the court in *New York* for blatantly racist systems is the discriminatory-purpose analog of this Court's suggestion in that even absent retrogression--generally a firm requirement for the finding of discriminatory effect--a proposed change might violate Section 5 if the resulting system "so discriminates on the basis of race or color as to violate the Constitution." *Beer*, 425 U.S. at 141, 142 n.14; Note, 109 HARV. L. REV. at 684-85.

This Court has recognized that "'Section 5 was a response to a common practice in some jurisdictions of staying one step ahead of the federal courts by passing new discriminatory voting laws as soon as the old ones had been struck down.'" *Beer*, 425 U.S. at 140 (quoting H.R. Rep. No. 196, 94th Cong., 1st Sess. 57 (1975)). Thus, Congress enacted Section 5 to ensure that plaintiffs bringing Section 2 suits have a "stationary target to attack," *New York*, 874 F. Supp. at 400, and thus that Section 2 adjudications will have a real and enduring impact on state voting law. The congressional purpose underlying the Section 5 effects prong requires retrogression rather than simply a perpetuation of existing discrimination. *City of Lockhart v. United States*, 460 U.S. 125, 134 and n.10 (1983). Therefore, it must also limit the scope of the purpose prong inquiry to a consideration of evidence directly relevant to the specific decision to implement a change. Any evaluation by a court of the allegedly discriminatory nature of a preexisting electoral system in the course of a Section 5 inquiry oversteps the statutory boundaries between Section 2 and Section 5. Note, 109 HARV. L. REV. at 685.

Indeed, this Court confirmed in *Miller*, 115 S. Ct. 2475, that the Section 5 preclearance requirement exacts "federalism cost" that may not always be justified, particularly when the DOJ wields Section 5 power in pursuit of ends beyond the scope of its statutory authority. *Id.* at 2493. In *Miller*, the DOJ exceeded its statutory authority by denying preclearance to nonretrogressive changes in order to obtain a state apportionment plan that maximized African-American voting strength, a result that Section 5 clearly did not require and that constituted racial gerrymandering in violation of the Fourteenth Amendment. *See id.* at 2490-94. Such misuse of Section 5 power is precisely what *Arizona v. Reno* and the dissent below would allow. By expanding the scope of the Section 5 inquiry beyond that intended by Congress, *Arizona v. Reno* exacts serious and unwarranted federalism costs by forcing states to

defend and justify their entire existing electoral systems before implementing concededly nonretrogressive changes in their voting laws.

CONCLUSION

Appellants in this case seek to merge (both directly and indirectly) two separate and distinct provisions of the Voting Rights Act. Such a merger would not only violate the plain language of the statute and congressional intent, it would also exact federalism costs of the highest order. For the reasons set forth above, the opinion of the United States District Court for the District of Columbia should be affirmed.

DATED: August, 1996.

Respectfully submitted,

SHARON L. BROWNE
* DEBORAH J. LA FETRA
*Counsel of Record
Pacific Legal Foundation
2151 River Plaza Drive, Suite 305
Sacramento, California 95833
Telephone: (916) 641-8888

Attorneys for Amicus Curiae

Supreme Court, U.S.
FILED
SEP 17 1996
CLERK

(9) (8)

Nos. 95-1455 & 95-1506

In The

Supreme Court of the United States

October Term, 1995

JANET RENO, ATTORNEY GENERAL OF THE UNITED STATES,

Appellant, and

GEORGE PRICE, *et al.*,

Appellants,

v.

BOSSIER PARISH SCHOOL BOARD,

Appellee.

On Appeal From The United States District Court For The District Of Columbia

BRIEF OF APPELLEE BOSSIER PARISH

JAMES J. THORNTON
642 Stoner Avenue
Shreveport, LA 71101
(318) 221-6294

MICHAEL P. McDONALD
HANS BADER
CENTER FOR INDIVIDUAL RIGHT
1300 19th Street, N.W.
Washington, D.C. 20036
(202) 833-8400

MICHAEL A. CARVIN*
DAVID H. THOMPSON
SHAW, PITTMAN, POTTS & TROWBRIDGE
2300 N Street, N.W.
Washington, D.C. 20037
(202) 663-8000

*Counsel of Record

COCKLE LAW BRIEF PRINTING CO. (800) 225-6964
OR CALL COLLECT (402) 342-2831

BEST AVAILABLE COPY

58 pp

TABLE OF CONTENTS

Page

TABLE OF CONTENTS i

STATEMENT 1

INTRODUCTION AND SUMMARY OF ARGUMENT ... 6

ARGUMENT 8

I. There Is No Legal Basis For Importing The Results Standard Of Section 2 Into Section 5 8

II. The Court Below Considered All Evidence Relevant To Section 5 Purpose And Only Rejected Evidence Relevant Solely To Section 2 27

III. The Court Below's Factual Finding That The School Board Acted Without A Discriminatory Purpose Is Not Clearly Erroneous 39

CONCLUSION 50

TABLE OF AUTHORITIES

Page

CASES

Allen v. State Bd. of Elections, 393 U.S. 544 (1969) 14

Anderson v. City of Bessemer City, 470 U.S. 564 (1985) 40

Ansonia Bd. of Educ. v. Philbrook, 479 U.S. 60 (1986) 22

Arizona v. Reno, 887 F. Supp. 318 (D.D.C. 1995) 9

Arlington Heights v. Metropolitan Hous. Dev. Corp., 429 U.S. 252 (1977) 29, 33, 36, 49

Beer v. United States, 425 U.S. 130 (1976) 9, 10, 13, 19, 20, 21

Blanchett v. Connecticut Gen. Ins. Corp., 419 U.S. 102 (1974) 24

Board of Curators of the Univ. of Missouri v. Horowitz, 435 U.S. 78 (1978) 38

Burlington N. R.R. Co. v. Oklahoma Tax Comm'n, 481 U.S. 454 (1987) 14

Burton v. Sheheen, 793 F. Supp. 1329 (D.S.C. 1992) 9

Bush v. Vera, ___ U.S. ___, 116 S. Ct. 1941 (1996) .... *passim*

Chisom v. Roemer, 501 U.S. 380 (1991) 16, 18

City of Lockhart v. United States, 460 U.S. 125 (1983) 11, 13, 14, 25

City of Pleasant Grove v. United States, 479 U.S. 462 (1987) 39

TABLE OF AUTHORITIES – Continued

Page

Coastal States Marketing v. Hunt, 694 F.2d 1358 (5th Cir. 1983) 48

Connecticut Nat'l Bank v. Germain, 503 U.S. 249 (1992) 15

Consumer Prod. Safety Comm'n v. GTE Sylvania, Inc., 447 U.S. 102 (1980) 15

Davis v. Michigan Dep't of Treasury, 489 U.S. 803 (1989) 14

Edward J. DeBartolo Corp. v. Florida Gulf Coast Bldg. & Constr. Trades Council, 485 U.S. 568 (1988) 23

Freeman v. Pitts, 503 U.S. 467 (1992) 39

Garcia v. United States, 469 U.S. 70 (1984) 14

General Elec. Co. v. Gilbert, 429 U.S. 125 (1976) 23

Georgia v. Reno, 881 F. Supp. 7 (D.D.C. 1995) 9

Georgia v. United States, 411 U.S. 526 (1973) 13

Holder v. Hall, ___ U.S. ___, 114 S. Ct. 2581 (1994) 13, 14, 17, 19, 26

Johnson v. DeGrandy, ___ U.S. ___, 114 S. Ct. 2647 (1994) 12, 27, 34, 41

Johnson v. Miller, 864 F. Supp. 1354 (S.D. Ga. 1994) 44

League of United Latin Amer. Citizens v. Clements, 999 F.2d 831 (5th Cir. 1993) 26

Lemon v. Bossier Parish School Bd., 240 F. Supp. 709 (W.D. La. 1965), *aff'd*, 370 F.2d 847 (5th Cir. 1967) 38

TABLE OF AUTHORITIES – Continued

Page

Litton Fin. Printing Div. v. NLRB, 501 U.S. 190 (1991) 22

Magnolia Bar Ass'n v. Lee, 994 F.2d 1143 (5th Cir.), *cert. denied*, 510 U.S. 994 (1993) 4

Miller v. Johnson, ___ U.S. ___, 115 S. Ct. 2475 (1995) ..... *passim*

Milliken v. Bradley, 418 U.S. 717 (1974) 38

Mobile v. Bolden, 446 U.S. 55 (1980) 17, 21, 36, 38

Morris v. Gressette, 432 U.S. 491 (1977) 25

Morse v. Republican Party of Va., ___ U.S. ___, 116 S. Ct. 1186 (1996) 19

National Labor Relations Bd. v. Catholic Bishop, 440 U.S. 490 (1979) 23

New York v. United States, 874 F. Supp. 394 (D.D.C. 1994) 9, 31, 46

New York v. United States, 505 U.S. 144 (1992) 24

Pasadena City Bd. of Educ. v. Spangler, 427 U.S. 424 (1976) 39

Patterson v. Shuman, 504 U.S. 753 (1992) 15

Pennhurst State School & Hosp. v. Halderman, 465 U.S. 89 (1984) 24

Pennsylvania v. Union Gas Co., 491 U.S. 1 (1989) 24

Personnel Adm'r v. Feeney, 442 U.S. 256 (1979) 33

Pierce v. Underwood, 487 U.S. 552 (1988) 22, 24

PPX Enter., Inc. v. Audiofidelity, 746 F.2d 120 (2d Cir. 1984) 48

TABLE OF AUTHORITIES – Continued

Page

Presley v. Etowah County Comm'n, 502 U.S. 491 (1992) 24

Public Employees Retirement Sys. v. Betts, 492 U.S. 158 (1989) 14

Puerto Rico Dep't of Consumer Affairs v. Isla Petroleum Corp., 485 U.S. 495 (1988) 22

Pullman-Standard v. Swint, 456 U.S. 273 (1982) 39

Reno v. Bossier Parish School Bd., ___ U.S. ___, 116 S. Ct. 1540 (1996) 5

Rogers v. Lodge, 458 U.S. 613 (1982) 29, 34, 35

Shaw v. Hunt, ___ U.S. ___, 116 S. Ct. 1894 (1996) ..... *passim*

Shaw v. Reno, 509 U.S. 630 (1993) 4

South Carolina v. Katzenbach, 383 U.S. 301 (1966) 25, 7

Southern Christian Leadership Conference v. Sessions, 56 F.3d 1281 (11th Cir. 1995), *cert. denied*, ___ U.S. ___, 116 S. Ct. 704 (1996) 4, 5

Texas v. United States, Civ. A. No. 94-1529 (D.D.C. Apr. 24, 1995) 31, 32

Thornburg v. Gingles, 478 U.S. 30 (1986) ..... *passim*

United States v. Board of Comm'rs, 435 U.S. 110 (1978) 13

Wards Cove Packing Co., Inc. v. Antonio, 490 U.S. 642 (1989) 42

Washington v. Davis, 426 U.S. 229 (1976) 20, 21

TABLE OF AUTHORITIES – Continued

Page

Watson v. Fort Worth Bank & Trust, 487 U.S. 977 (1988) 42

Westwego Citizens for Better Gov't v. City of Westwego, 906 F.2d 1042 (5th Cir. 1990) 5

White v. Regester, 412 U.S. 755 (1973) 20, 21, 34

Will v. Michigan Dep't of State Police, 491 U.S. 58 (1989) 24

STATUTES AND RULES

28 C.F.R. §§ 51.53-51.58 ..... 1, 2, 23

28 U.S.C. § 2201 ..... 24, 25

42 U.S.C. § 1971(d) 14

42 U.S.C. § 1973b(8) 13

42 U.S.C. § 1973c 9, 14, 25, 26

Fed. R. Evid. 201 5

Fed. R. Evid. 401 37

La. Rev. Stat., tit. 18 § 1363(A) 45

LEGISLATIVE MATERIALS

128 Cong. Rec. 3,841 (1982) 15

128 Cong. Rec. S6930 (daily ed. June 17, 1982) 16

128 Cong. Rec. 7,095 (1982) 15

128 Cong. Rec. 14,938 (1982) 16

H.R. Rep. No. 227, 97th Cong., 1st Sess. 33 (1981) 15, 17

TABLE OF AUTHORITIES – Continued

Page

S. Rep. No. 417, 97th Cong., 2d Sess. 12 (1982) 15, 16, 20, 21

Voting Rights Act: Hearing Before the Subcommittee on the Constitution of the Senate Committee on the Judiciary, 97th Cong., 2d Sess. 79 (1982) 15

OTHER AUTHORITIES

A. Thernstrom, *Whose Votes Count?* (1987) 15

Boyd & Markman, *The 1982 Amendments to the Voting Rights Act: A Legislative History*, 40 Wash. & Lee L. Rev. 1347 (1983) 15

10A Wright & Miller, *Federal Practice and Procedure* § 2759 (1983) 25

STATEMENT

1. Bossier Parish is located in northwestern Louisiana, and, according to the 1990 Census, has a voting age population that is 17.6% black, and an overall black population of 20.1%. App. 2a.[1] The Parish is governed by a 12-member Police Jury. Although no electoral district of the Police Jury has ever had a majority of black voters, two black candidates have been consistently elected since 1979 to represent a 37.9% black district, and the current incumbent, Jerome Darby, was reelected without opposition in a 26.9% black district (District 7) under the new 1991 plan. App. 85a; App. 2a; J.A. 55-60.

On April 30, 1991, all the members of the Police Jury, including the black member serving on its Reapportionment Committee, approved a plan containing two districts with substantial black populations. App. 3a. Specifically, District Four was 45.2% black, and District Seven was 43.9% black. App. 85a (¶ 59). The plan was submitted to the Justice Department on May 28, 1991, and on July 29, 1991, the Attorney General precleared it. The Police Jury submitted all materials required under the Attorney General's Section 5 guidelines and in no way misled the Department of Justice. 28 C.F.R. §§ 51.53-51.58.

Given that the School Board and the Police Jury had shared the same district boundaries until 1980, the School Board approached the Police Jury to formulate a redistricting plan. App. 4a. The Police Jury rejected this overture. App. 29a. State law expressly prohibited the School Board from changing, splitting, or consolidating the precincts established

---

[1] In this brief, citations are to the Appendix ("App.") filed with the jurisdictional statement of Janet Reno, *et al.*, on March 11, 1996, including the numerous stipulations of the parties which are designated herein by reference to the paragraph number; to the Joint Appendix ("J.A.") filed on August 1, 1996; to the transcript of the hearing of the D.C. District Court on April 10 and 11, 1995 ("Tr."); to the exhibits submitted at that time by the appellee ("Plaintiff's Exh."), and the appellant, Janet Reno ("U.S. Exh."); and to the brief of appellant-intervenors ("A-I").

by the Police Jury for the Police Jury's 1991 redistricting plan. J.A. 265a-266a. It was therefore required to use those existing 1991 precincts as redistricting units for its own plan. And as the parties stipulated: "[i]t is impossible to draw, on a precinct level, a black-majority district in Bossier Parish without cutting or splitting existing precinct lines." App. 115a (¶ 152).

Subsequently, George Price, president of the local chapter of the NAACP and an appellant-intervenor in this case, submitted his own plan to the School Board that included two majority-black districts, the maximum possible number of such districts and roughly proportional (2/12) to the Parish's black population. App. 6a. The plan was drawn by William Cooper, of the American Civil Liberties Union, Testimony of W. Cooper at 1, for the exclusive purpose of "creat[ing] two majority black districts," J.A. 260, wholly without regard to precinct boundaries. The NAACP plan subordinates traditional redistricting principles, such as compactness and respect for the political boundaries of towns, the Police Jury districts and precincts. A district court in a related case said of a modified, "improved" version of the NAACP plan, that it "most nearly resembles an octopus as it stretches out to the nooks and crannies of the parish in order to collect enough black voting age population to create not one, but two, majority black districts in Bossier." J.A. 38. Although the Board's plan, like all prior redistricting plans, preserves all town lines outside of Bossier City in the Parish, the NAACP plan splits the boundaries for all three. Plaintiff's Trial Exh. 11 (second, eighth and twelfth pages of the Exhibit).[2]

In direct contravention of Louisiana law, the NAACP plan split 46 precincts, 65 times. Plaintiff's Exh. 11, pp. 1-26; App. 29a. (Some of the precincts suffered more than a single split; thus requiring that they become three or more new precincts.) Of these, 17 precincts would have had less than 20 people in them. Plaintiff's Exh. 11, pp. 1-26. The Parish's district attorney and cartographer advised the Board, at the

---

[2] This exhibit has been lodged with the Court.

September 3, 1992 meeting where the NAACP plan was presented that its massive number of precinct splits violated state law, and then it was rejected as a viable redistricting alternative. App. 6a; App. 99a (¶ 102). The School Board shortly thereafter on September 17, 1992, adopted the Police Jury plan that already had been precleared. App. 7a. At the September 3, 1992 meeting, the School Board also responded to NAACP concerns by granting its request that a black be appointed to the vacant seat on the Board. App. 30a.

Although it had precleared the identical Police Jury plan in 1991, and although there was no retrogression of minority voting strength of the School Board plan precleared in the 1980's, the Justice Department objected under Section 5 to the School Board plan on August 30, 1993. The Attorney General found a discriminatory "purpose" because, although "state law prohibits" the NAACP "alternative plan" from legally being adopted, this did not "necessarily" foreclose adoption of the maximization alternative. App. 156a. (School Board "is not free to adopt a plan that unnecessarily limits the opportunity for minority voters. . . . ") (emphasis added).

The NAACP plan's subordination of basic districting principles was done solely in order to replace a plan with two districts having a black population of 44% and 47%, with a plan that had two black majority districts. Yet this creation of such "safe" black districts was wholly unnecessary to provide black voters with a "viable" opportunity to elect their preferred candidates. *There is no competent evidence of racial bloc voting in any local Bossier Parish elections*, and the "foreseeable impact" (and actual result) of the Board's plan was that two black candidates would be elected to the Board. Specifically, the Justice Department's own expert was concededly unable to find *any* racial bloc voting in *any* election for *any* Bossier Parish office, pursuant to either the "extreme case analysis [or] bivariate ecological regression analysis" endorsed by the *Gingles* plurality opinion. *Thornburg v. Gingles*, 478 U.S. 30, 52-53 (1986); J.A. at 115-21. The *only* election where racial bloc voting was found was one "exogenous" *state judicial* race (held not just in Bossier Parish), which obviously reflects different voting patterns than those

for *local representative* office. J.A. 113-15.[3] Even in this single race, the "racial polarization" led to the black candidate receiving 35.7% of the vote in a parish with a 17.6% black voting age population, a difference of 18.1%. J.A. 57.

Moreover, even absent such sophisticated evidence, the raw election results themselves demonstrate that white bloc voting, assuming it exists at all, is not sufficient to "usually" defeat black preferred candidates. *Gingles*, 478 U.S. at 49. Two different black candidates have been consistently elected in a 37.9% (and 27.9% in 1991) black Police Jury district since 1979, a black candidate defeated a white opponent in a run-off in a 25.6% district for the Bossier City Council and black aldermen have been elected in three of the Parish's towns, one of whom was elected at-large in a town (Haughton) with a 30.1% black population. J.A. 55-59. In total, of the 14 "black against white" elections held in Bossier Parish jurisdictions with black populations of between 18% and 43% before the School Board adopted its plan, black candidates who even arguably had black voter support won six, or 43%, of the elections. J.A. 55-59. Of the two School Board races analyzed, the black candidates running against a long-standing white incumbent in a 30.1% black district lost by 59 and 65 votes, respectively, and the United States expert found no statistically significant racial bloc voting in these races. J.A. 57, 59, 116-17; direct Testimony of Jeff Darby at 3; direct Testimony of Johnny Gipson at 2. Since black candidates were elected in districts and towns ranging from 25.6% to 37.9% black populations, two different School Board candidates received approximately 50% of the vote against the white incumbent in a 30.1% black district, and the one "racially polarized" exogenous election provided the black candidate with 18.1% higher vote tally than the black voting age population, it is clear, even without the concessions of the

---

[3] *See, e.g., Southern Christian Leadership Conference v. Sessions*, 56 F.3d 1281, 1293 (11th Cir. 1995), *cert. denied*, ___ U.S. ___, 116 S. Ct. 704 (1996); *Magnolia Bar Ass'n v. Lee*, 994 F.2d 1143, 1149 (5th Cir.), *cert. denied*, 510 U.S. 994 (1993).

United States voting rights expert, that a plan with two districts with black percentages in the mid-40s would provide black voters with a viable opportunity to elect black candidates of their choice. The Court need not speculate about this, however, because, as the appellant-intervenors admit, when elections *were* held under the Board's "intentionally discriminatory" plan in 1994, two black candidates were elected to the Board, one of them from a 26.7% black district.[4]

Bossier Parish successfully brought a declaratory judgment action in the three-judge District of Columbia court to obtain preclearance under Section 5. The district court rejected the appellants' argument that a Section 2 violation affords grounds for denying preclearance under Section 5.

---

[4] Appellant-Intervenors concede that the elections resulted in two black candidates being placed on the School Board, but argue, relying on this Court's denial of the Motion to Supplement the Record, that such "evidence of events that occurred after the Board's decision cannot illuminate its intent at the time it made the decision." Intervenor-Appellants' Br. 6 n.2. *See Reno v. Bossier Parish School Bd.*, ___ U.S. ___, 116 S. Ct. 1540 (1996). This is an odd contention since both appellants relied heavily on 1993 elections and events (the disbanding of the new "bi-racial committee") which occurred "after the Board's decision." However that may be, the most recent elections are relevant to show the absence of any racial bloc voting or potential "results," and to refute the appellants' erroneous assertion that "the School Board adopted a plan 'which *guarantees* that blacks would remain underrepresented on the Board.' " U.S. Br. 19 (quoting App. 41a (quoting *City of Port Arthur v. United States*, 517 F. Supp. 987, 1022 (D.D.C. 1981)) (emphasis added)). Moreover, it is well established that a court may take judicial notice of any fact that is not subject to reasonable dispute and is capable of accurate and ready determination. *See, e.g.*, Fed. R. Evid. 201. Accordingly, appellate courts have routinely taken judicial notice of post-trial elections in voting rights cases given their clear relevance to the proceedings. *See, e.g., Southern Christian Leadership Conference v. Sessions*, 56 F.3d at 1288 n.13; *Westwego Citizens for Better Gov't v. City of Westwego*, 906 F.2d 1042, 1045 (5th Cir. 1990) (noting that "given the long term nature and extreme costs necessarily associated with voting rights cases, it is appropriate to take into account elections occurring subsequent to trial.") (footnote omitted).

App. 11a-12a. In two sentences of its 61-page post-trial brief, the United States (but not the intervenor-appellants) argued that, even if Section 2 is not properly before the court, the court should nevertheless consider and rule upon "*all* the evidence . . . demonstrating how clear the Section 2 violation is." U.S. Post-Trial Br. 36. The court was to engage in this inquiry because, if the court found a Section 2 violation, it could use the "School Board's . . . awareness that the proposed plan might violate Section 2" to conclude that the Board had a "discriminatory purpose in adopting the proposed plan." The district court refused to conduct "full-blown Section 2 litigation" in a Section 5 purpose case and thus refused to consider "evidence relevant *only* to the section 2 violation." App. 23a; App. 9a n.6 (emphasis added). The court then found an absence of discriminatory purpose. Although the district court discounted some of the reasons advanced by the Parish, because they were not the "real reasons," it was "satisfied" that two reasons were, in fact, "legitimate" – "guaranteed preclearance" and "the absence of precinct splits." App. 27a-28a. The dissenting opinion, although agreeing that Section 2 could not be imported into Section 5, disagreed with the lower court's discriminatory purpose analysis, for essentially the reasons outlined by appellants in this Court.

INTRODUCTION AND SUMMARY OF ARGUMENT

Throughout the 1990's redistricting cycle, the Justice Department extended and distorted its uniquely intrusive Section 5 powers to invalidate ameliorative redistricting plans, if they were chosen in preference to alternative plans that consciously subordinated traditional districting principles for the avowed purpose of maximizing the number of majority-minority districts. The Department has done this principally by finding a failure to adopt the maximizing alternative reflected a racial purpose, even though such alternatives were objectively inferior pursuant to nonracial districting principles, or by invoking Section 2 "results," which the Department interprets to require selection of the maximizing

alternative regardless of its adherence to traditional districting principles. In short, the Department has sought to convert the benchmark for measuring Section 5 "effect" – the preexisting system – into the benchmark for initially assessing Section 2 "result" – the race-conscious maximizing alternative – and found Section 5 violations for failure to adopt the maximizing alternative, either directly by holding that the failure to maximize constitutes a proscribed Section 2 "result," or indirectly by finding that such a "failure" reflects a discriminatory purpose, as supplemented by Section 2 evidence of racial bloc voting and historical discrimination.

In its racial gerrymander cases of the past two Terms, the Court has expressly rejected any such understanding of Section 5 or Section 2, and otherwise prohibited interpreting federal law to require the unconstitutional action of adopting a race-conscious maximization plan that subordinates traditional districting principles. Specifically, the Court has explicitly rejected the notion that a Section 5 "purpose" may be inferred from adopting a plan that more closely adheres to traditional districting principles than the proposed maximizing alternative and rejected the notion that Section 5 preclearance can be premised on a finding that the state's redistricting plan violates Section 2, particularly if the purported Section 2 violation is the failure to adopt a maximizing alternative. Moreover, in keeping with its decision that a Section 2 violation cannot establish Section 5 purpose, this Court has expressly held the Justice Department's "purpose" findings "insupportable," without examining any of the Section 2 evidence concerning racial bloc voting and historical discrimination that the Department urged upon it as relevant to this issue.

Notwithstanding appellants' efforts to wholly distort the opinion below, the district court here articulated and engaged in precisely the same analysis employed in those cases. The court found no proscribed purpose, which is plainly correct because all the Board did here was choose a nonretrogressive plan identical to one that had been precleared by the Justice Department a year earlier and rejected a race-conscious maximizing alternative that is demonstrably inferior with respect

to a host of traditional districting principles, primarily because it split 46 of 56 existing precincts, but also with respect to compactness and maintenance of existing municipal and district boundaries. The court also correctly concluded that, since Congress did not amend Section 5 in 1982 and since the 1982 legislative history also *uniformly* makes clear that Congress *universally* understood that Section 5 prohibits *only* purposeful or retrogressive changes, preclearance cannot be denied to a benign, nonretrogressive change regardless of any unintended Section 2 "result" on minority voters. Having so ruled, the court necessarily also rejected the Justice Department's fall-back argument that it should consider *all* Section 2 evidence, such as racial bloc voting, that is expressly designed to show that rejection of the maximizing alternative has such a "result," but inherently can say nothing about the *reason* for rejecting such alternatives. Although appellants desperately attempt to mislead the Court into believing otherwise, this was the *only* such "Section 2 evidence" rejected by the district court; it manifestly did not reject evidence that was actually probative of the Board's purpose simply because that evidence might also be relevant to a Section 2 inquiry. This is made crystal clear by the court's explicit description of "Section 2 evidence" as that "evidence relevant *only* to the section 2 inquiry" and further confirmed by every statement and citation in the opinion below.

ARGUMENT

I. There Is No Legal Basis For Importing The Results Standard Of Section 2 Into Section 5

Section 5 of the Voting Rights Act imposes a uniquely severe burden on states seeking to operate their electoral systems and enforce their laws. In a reversal of all basic principles of federalism, and all normal presumptions of civil litigation, Section 5 invalidates all otherwise proper local voting laws and practices "unless and until" the submitting jurisdiction proves that it has satisfied the substantive requirements of Section 5 to either a District of Columbia three-judge court or the Attorney

General. Section 5, however, does at least set forth with some specificity the substantive standard that covered jurisdictions must satisfy to lift this burden, and the scope of the declaratory judgments the three-judge court is authorized to issue; *i.e.*, a "declaratory judgment that such [changed voting] qualification . . . does not have the purpose and will not have the effect of denying or abridging the right to vote on account of race or color. . . . " 42 U.S.C. § 1973c. It is well-established that the "effect" prong of the Section 5 reaches only changes causing retrogression in minority voting strength from what existed under the *status quo ante*. *Beer v. United States*, 425 U.S. 130, 141 (1976).

Notwithstanding this plain and unequivocal language, appellants seek to erect yet another obstacle under Section 5 to implementing a voting change: a declaratory judgment that the change does not violate Section 2 of the Act by creating a discriminatory "result." Although the United States does not dispute that Section 5 itself proscribes only voting changes with a discriminatory purpose or retrogressive effect, they argue that the three-judge court (and the Attorney General) nevertheless has the equitable authority – indeed, duty – to enjoin changes free from such defects, but violative of Section 2, because *Beer* and Section 2's legislative history "authorize" such objections. This argument is simply lawless in the most literal sense – it seeks to have the judiciary erect a substantive prohibition on state governments that can be found nowhere in the laws passed by Congress. This Court, of course, is not free to draft its own statutes, and no amount of legislative history or administrative interpretation can so empower it. It is little wonder that the United States' argument has been rejected out of hand by every lower federal court to pass on it[5] and is irreconcilable with this Court's binding precedent.

---

[5] *Arizona v. Reno*, 887 F. Supp. 318, 320-21 (D.D.C. 1995); *Georgia v. Reno*, 881 F. Supp. 7, 12 (D.D.C. 1995); *New York v. United States*, 874 F. Supp. 394, 397-98 (D.D.C. 1994); *Burton v. Sheheen*, 793 F. Supp. 1329, 1351-52 (D.S.C. 1992).

1. The short, and complete, answer to appellants' argument is that this Court, in just the past two Terms, has already squarely rejected the notion that a Section 5 objection can be premised on any grounds other than an invidious purpose or retrogressive effect. Indeed, these cases resolve the precise question here by holding that Section 5 affords no basis for objecting to a redistricting plan because it failed to create additional "safe" minority districts, unless that failure was motivated by an invidious purpose. In *Miller v. Johnson*, ___ U.S. ___, 115 S. Ct. 2475 (1995), the United States argued that race-conscious redistricting was warranted to prevent a violation of Section 5. 115 S. Ct. at 2491-92. There, as here, the alleged Section 5 violation was that a political jurisdiction with racially polarized voting and historical discrimination had failed to create a sufficient number of "reasonably" compact majority-minority districts. *Id.* In response, the *Miller* Court squarely rejected this possible Section 5 defense because "[a]meliorative changes, even if they fall short of what might be accomplished in terms of increasing minority representation, cannot be found to violate section 5 unless they so discriminate on the basis of race or color as to violate the Constitution." *Id.* at 2492 (quoting Days, *Section 5 and the Role of the Justice Department*, and B. Grofman & C.P. Davidson, *Controversies in Minority Voting* 56 (1992)). The "State's policy of adhering to other districting principles instead of creating as many majority-minority districts as possible does not support an inference that the plan 'so discriminates on the basis of race or color as to violate the Constitution,' and thus cannot provide *any* basis under § 5 for the Justice Department's objection." *Id.* at 2492 (quoting *Beer*, 425 U.S. at 141) (emphasis added). The Court rejected the Justice Department's contrary interpretation as an "insupportable" expansion of "its authority under the statute beyond what Congress intended" that raised "troubling and difficult constitutional questions." *Miller*, 115 S. Ct. at 2492-93. Accordingly, the *Miller* Court squarely held that a Section 5 objection was warranted only if a redistricting change is retrogressive or has a discriminatory purpose sufficient to violate the Constitution.

The Court reaffirmed this holding just last Term in another case remarkably similar to the instant one, *Shaw v. Hunt*, ___ U.S. ___, 116 S. Ct. 1894 (1996) ("*Shaw II*"). In that case, the district court and Justice Department argued that race-conscious redistricting was appropriate because it was necessary to avoid *both* a Section 2 and a Section 5 violation. This Court again found that the Justice Department's "maximization policy" of requiring an additional black majority district "is not properly grounded in § 5 and the Department's authority thereunder." 116 S. Ct. at 1904. "Here once again we . . . find that creating an additional majority-black district was not required under a correct reading of § 5" because the nonretrogressive redistricting plan did not violate "the purpose prong of § 5" and thus "cannot violate § 5." *Id.* at 1903.

Of particular relevance, in *Shaw II*, the "United States attempt[ed] to distinguish this case from *Miller*" by pointing to the North Carolina State "legislature's determination that it may be susceptible to a § 2 challenge" – an issue that had not been directly addressed in *Miller*. *Shaw II*, 116 S. Ct. at 1904 n.6. The Court rejected this understanding of Section 5 and *Miller* because "we doubt that a showing of discriminatory effect under § 2, alone, could support a claim of discriminatory purpose under § 5." *Id. Accord Bush v. Vera*, ___ U.S. ___, 116 S. Ct. 1941, 1963 (1996) (race-conscious redistricting not justified by "state['s] interest in complying with VRA § 5" because the "State went beyond what was reasonably necessary to avoid retrogression"); *City of Lockhart v. United States*, 460 U.S. 125, 134 (1983) ("Since the new plan did not increase the degree of discrimination against blacks, it was *entitled* to § 5 preclearance.") (emphasis added).

In this case, the United States again seeks to distinguish *Miller* (although not *Shaw II*) on the ground that "*Miller* did not address the issue whether preclearance should be withheld on the basis of a Section 2 violation. . . . " U.S. Br. 43-44. But this is indistinguishable from the argument – squarely rejected in *Shaw* – that a Section 2 "results" violation could justify finding a Section 5 violation. Moreover, even if the Court had not already specifically rejected this particular variation on the United States' consistent "maximization"

theme, it certainly has squarely held that there is not "*any* basis under § 5 for [an] . . . objection" except discriminatory purpose or retrogressive effect. *Miller*, 115 S. Ct. at 2492. *See Shaw II*, 116 S. Ct. at 1904 (voting change "*cannot violate* § 5 unless [there is discriminatory purpose]") (quoting *Miller*, 115 at 2492).

Moreover, the United States defines a "§ 2 violation," as a situation "where racially-polarized voting deprives minority voters of an equal opportunity to elect their chosen candidates, and it is possible to create 'more than the existing number of reasonably compact districts with a sufficiently large minority population to elect candidates of their choice.' " U.S. Br. 44 (quoting *Johnson v. De Grandy*, ___ U.S. ___, 114 S. Ct. 2647, 2655 (1994)). The United States boldly asserts that "*Miller* did not hold that preclearance must be granted in the face of [such a § 2 violation]." *Id.* But, of course, *Miller* did precisely and unequivocally hold that "§ 5 cannot be violated" simply by showing that a racially polarized political jurisdiction did not "create" a "possible" majority-minority district: "In utilizing § 5 to require States to create majority-minority districts wherever possible, the Department of Justice expanded its authority under the Statute beyond what Congress intended and we have upheld." 115 S. Ct. at 2493. To be sure, in *Miller*, as here, the United States specific argument was that the failure to maximize constituted discriminatory purpose, rather than a § 2 discriminatory result. *See* Department of Justice Letter of Aug. 30, 1993, App. 154a, App. 156a-157a. Nevertheless, *Miller* rejected any such maximization policy as "far removed" from any proper (and constitutional) understanding of Section 5. *Id.* at 2493. If it is an unjustified distortion of Section 5 to interpret its *language* as requiring maximization, it is obviously an even greater distortion to require such maximization by importing Section 2 into Section 5, without any basis for doing so in the statutory text. And, as noted, *Shaw II* rejected any such misinterpretation of *Miller's* holding. *See also Shaw II*, 116 S. Ct. at 1904 ("Failure to maximize cannot be the measure of § 2.") (quoting *Johnson*, 114 S. Ct. at 2660).

But even assuming that the lower court's understanding of Section 5's scope is not mandated by "*stare decisis*, especially in such sensitive political contexts as the present," *Vera*, 116 S. Ct. at 1964, it is, as we presently show, certainly required by any rational principle of statutory construction.

2. When Section 2 was amended in 1982 to incorporate the "results" standard, the life of Section 5 was also extended for another 25 years. 42 U.S.C. § 1973b(8). Other than this extension, however, neither the substantive language nor any other provision of Section 5 was amended in any way. As noted, it was well established in 1982, pursuant to this Court's 1976 decision in *Beer*, that Section 5 "effects" reached only changes which caused a retrogression of minority voting strength. *Beer v. United States*, 425 U.S. at 141 ("[T]he purpose of § 5 has always been to insure that no voting-procedure changes would be made that would lead to a retrogression in the position of racial minorities with respect to their effective exercise of the electoral franchise."); *City of Lockhart v. United States*, 460 U.S. at 134 (quoting *Beer*). As the United States correctly notes, it is a well-established canon of statutory construction, particularly for the Voting Rights Act, that congressional reenactment of a statute without change incorporates this Court's prior interpretations of the statute. *United States v. Board of Comm'rs*, 435 U.S. 110, 134 (1978); *Georgia v. United States*, 411 U.S. 526, 533 (1973) ("After extensive deliberations in 1970 on bills to extend the Voting Rights Act, during which the *Allen* case was repeatedly discussed, the Act was extended for five years, without any substantive modification of § 5.")

Moreover, since 1982 this Court has repeatedly recognized that the substantive scope of Section 5 and Section 2 are markedly different, because Section 5 has a much more "limited substantive goal." *Bush v. Vera*, 116 S. Ct. at 1963. *See Holder v. Hall*, ___ U.S. ___, 114 S. Ct. 2581, 2587 (1994) ("[T]he two sections differ in structure, purpose and application."); *Miller*, 115 S. Ct. at 2493 (Section 5's goal is " 'freezing election procedures in the covered areas unless the changes can be shown to be non-discriminatory.' ") (quoting *Beer v. United States*, 425 U.S. at 140). Specifically, the

Court has consistently ruled that "effect" means only "retrogression."[6] Accordingly, it is even clearer now than it was in 1982 that the effect prong of Section 5 invalidates only new voting changes that "increase the degree of discrimination against blacks [or other minorities]." *City of Lockhart*, 460 U.S. at 134. Plainly it does not reach changes that simply fail to *improve* minority voting strength or otherwise embody the "results" standard of Section 2.

Moreover, no language in Section 5 cross-references Section 2, no language anywhere in the Voting Rights Act incorporates Section 2 into Section 5 or otherwise implies that Section 2's substantive standards govern Section 5 determinations. Nor are Section 5 courts granted jurisdiction to address Section 2 challenges. To the contrary, the authority and jurisdiction of the three-judge court in the District of Columbia is strictly limited to issuing a declaratory judgment on whether the voting change has a discriminatory purpose or retrogressive effect. 42 U.S.C. § 1973c.[7] Conversely, the three-judge district court simply has no subject matter jurisdiction over Section 2 claims; that jurisdiction is vested exclusively in the typical "district courts of the United States." 42 U.S.C. § 1971(d). Accordingly, *regardless* of what the legislative history contains, there is no basis for distorting or amending the "plain meaning" of the language enacted into law.[8]

---

[6] *Miller*, 115 S. Ct. at 2493; *Shaw II*, 116 S. Ct. at 1904; *Shaw v. Reno*, 509 U.S. 630, 654 (1993). *See also Holder*, 114 S. Ct. at 2587 (opinion of Kennedy, J.) (benchmark for measuring § 5 effect, but not § 2 result, is the "existing voting practice"); *id.* at 2589 (O'Connor, J., concurring) (same); *City of Lockhart*, 460 U.S. at 134 (The aim of "Section 5 was to prohibit only retrogressive changes.").

[7] *City of Lockhart*, 460 U.S. at 129 n.3. (Under Section 5, the issues to be decided by a three-judge court are strictly limited.); *Allen v. State Bd. of Elections*, 393 U.S. 544, 561-62 (1969).

[8] "Legislative history is irrelevant to the interpretation of an unambiguous statute." *Davis v. Michigan Dep't of Treasury*, 489 U.S. 803, 808 n.3 (1989). *Public Employees Retirement Sys. v. Betts*, 492 U.S. 158, 172 (1989); *Burlington N. R.R. Co. v. Oklahoma Tax Comm'n*, 481 U.S. 454, 461 (1987); *Garcia v. United States*, 469 U.S. 70, 76 n.3 (1984); *Consumer Prod. Safety Comm'n v. GTE Sylvania, Inc.*, 447 U.S. 102, 119 (1980); *Connecticut Nat'l Bank v. Germain*, 503 U.S. 249, 253-254 (1992); *Patterson v. Shuman*, 504 U.S. 753, 760 (1992).

We nevertheless note that the legislative history *uniformly* reflects a universal understanding that the language of Section 5 prohibits only changes with a discriminatory purpose or retrogressive effect. First, every expression of congressional intent confirms that Congress understood that it was simply "extend[ing] the *present* coverage" of Section 5. S. Rep. No. 417, 97th Cong., 2d Sess. 2 (1982) ("S. Rep.") (emphasis added). *See id.* at 7 ("Congress has decided to retain Section 5."). *See also* H.R. Rep. No. 227, 97th Cong., 1st Sess. 1 (objective of 1982 Act is "to extend continuously [Section 5]") (1981) ("House Rep."). Indeed, as the commentators have noted, not one witness at the Senate or House Subcommittee Hearings in 1982 discussed changing Section 5 or otherwise suggested that changes to Section 5's preclearance standard were needed.[9] Even the two representatives who *desired* that a Section 5 objection be premised on a Section 2 violation clearly stated their understanding that the "effect" prong of Section 5 reached only "retrogression" and that it differed from Section 2 "results."[10] The legislative history otherwise confirms congressional awareness of the

---

[9] *See* A. Thernstrom, *Whose Votes Count?* 300-01 n.10 (1987); Boyd & Markman, *The 1982 Amendments to the Voting Rights Act: A Legislative History*, 40 Wash. & Lee L. Rev. 1347, 1420-21 n.365 (1983). *Voting Rights Act: Hearings Before the Subcommittee on the Constitution of the Senate Comm. on the Judiciary*, 97th Cong., 2d Sess. 79-80 (1982).

[10] Senator Kennedy: "As mentioned in this report, *the section 2 standard is not the same as the section 5 standard.* This means not only that section 2 is governed by the totality of the circumstances factors, but it also means that the retrogression requirement of *Beer* against United States does not apply to section 2 cases – although of course, such a retrogression would be relevant evidence in section 2 case." 128 Cong. Rec. 7,095 (1982) (emphasis added). 128 Cong. Rec. 3,841 (statement of Representative Sensenbrenner) (same).

obvious differences between the Section 2 "results" standard and the Section 5 "effects" standard.[11]

Thus, even assuming a statute can be amended while its language remains wholly unaltered, Congress' deliberate and conscious preservation of an existing preclearance process that unequivocally did not reach nonretrogressive discriminatory results is irreconcilable with the conclusion that the 1982 Amendments were intended to inject such a results standard into the Section 5 preclearance process. This truism was made explicit in colloquies between one of the principal sponsors of the Act, Representative Edwards, and two of his colleagues, after the Senate Report had been written.[12] Accordingly, under any theory of statutory interpretation, there is no basis for interpreting Section 5 to reach Section 2 results.[13]

---

[11] 2 Senate Hearings 80 (Sen. Dole) ("The Section 5 effects test is different from the results test of *White v. Regester*."); S. Rep. at 68; 128 Cong. Rec. S6930-31 (daily ed. June 17, 1982) (remarks of Sen. DeConcini); 1 Senate Hearings 89 (Attorney General Smith); 1 Senate Hearings 671 (Sen. Hatch); 1 Senate Hearings 1689 (W. B. Reynolds).

[12] Mr. LEVITAS. . . . I . . . inquire of the gentlemen from California whether there is *any portion of this legislation that changes section 5 of the act, of the Voting Rights Act, or changes the tests contained therein. Does it or does it not affect section 5?*

Mr. EDWARDS of California. If the gentleman will yield, I believe the gentleman is referring to pre-clearance, section 5.

Mr. LEVITAS. That is right.

Mr. EDWARDS of California. *No change was made.*

Mr. FOWLER. . . . *[I]s it true that the proposed amendments sent over by the other body [Senate] do not change in any way section 4 of the current Voting Rights Act?*

Mr. EDWARDS of California. *That is correct; the preclearance provisions are not changed.*

128 Cong. Rec. 14,938 (1982) (emphasis in original).

[13] *See Chisom v. Roemer*, 501 U.S. 380, 396 (1991) ("[W]e are convinced that if Congress had such an intent, Congress would have made it explicit in the statute, or at least some of the Members would have

Incredibly, neither appellant takes issue with *any* of the foregoing. Neither appellant seriously argues that the effects (or purpose) prong of Section 5 can be interpreted to prohibit (benign) nonretrogressive changes. They do not seek to have this Court overturn its consistent holdings, before and after 1982, that "effect" means only "retrogression." They do not and cannot cite any legislative history or any administrative interpretations suggesting that Section 5's "effect" or "purpose" invalidate an "ameliorative" change because of a proscribed Section 2 "result."[14]

---

identified or mentioned it at some point in the unusually extensive legislative history of the 1982 amendment."); *Holder*, 114 S. Ct. at 2629 (Stevens, J. dissenting) ("When a statute has been authoritatively, repeatedly, and consistently construed for more than a quarter century, and when Congress has reenacted and extended the statute several times with full awareness of that construction, judges have an especially clear obligation to obey settled law.").

[14] According to the United States, a statement in the House Committee Report articulating the rationale for *amending Section 2* to remove the "purpose" requirement, indicates that a Section 2 violation should result in the denial of preclearance under Section 5. U.S. Br. 38 (quoting House Rep.). Even when taken out of context, however, that passage does not say anything about Section 5, about Section 5 courts or about those courts' ability to entertain Section 2 claims. Of course, if the passage *did* say that Congress was amending Section 2 to make its prohibitions coextensive with Section 5, then Section 2 would prohibit only "retrogression." We doubt the United States would accept this result, even though they elsewhere insist that it would be "anomalous" for Section 5 and Section 2 to have different standards. When restored to its context, the quoted passage simply advances the primary rationale for why Congress should overturn *Mobile v. Bolden*, 446 U.S. 55 (1980) and adopt a non-"purpose" standard for Section 2, as the immediately following paragraphs make clear. *See, e.g.*, House Rep. at 29 ("applying a 'purpose' standard under Section 2 while applying a 'purpose or effect' standard under the other sections of the Act would frustrate the basic policies of the Act."). But this does not suggest that the non-"intent" standard adopted for Section 2 would be identical to the Section 5 "effect" standard and, much more important, there is absolutely no suggestion that Congress was modifying in any way the Section 5 "effect" standard to track Section 2. In this regard,

Rather, they make the astonishing argument that a change can be denied preclearance under Section 5 *even if it satisfies Section 5*. In support of this *non sequitur*, they point to legislative history and administrative interpretations which, they claim, "authorize" Section 5 objections for actions which Section 5 does not prohibit, but Section 2 does. While we deal with the specifics of those arguments below, the dispositive, and seemingly obvious, point is that a court cannot object under Section 5 unless it can interpret *Section 5* to prohibit the proposed voting change.

---

the most that can be gleaned from the House Report is that Congress thought that there would be gap in the Voting Rights Act's protections if Section 5 imposed a *more difficult* legal standard on states that Section 2 imposes. If that were the case, then discriminatory voting procedures would be illegal only if they were changed and triggered Section 5 coverage, but precisely the same practices would be immune from Section 5 or Section 2 challenge if they were "either [unchanged since] 1965 or because they arise in jurisdictions not covered by Section 5." *Id.* at 28. *Cf. Chisom v. Roemer*, 501 U.S. at 401. But there is no such gap if Section 5 imposes a *less onerous* standard than Section 2, because voting procedures which satisfy Section 5 can nonetheless be challenged under the generally applicable Section 2. Finally, as this Court has already carefully described, the House Report was describing a predecessor version of the Section 2 law rather than that ultimately enacted, which contained only a subsection (a) simply "provid[ing] that proof of discriminatory intent is no longer necessary." *Chisom*, 501 U.S. at 395. It was only in the Senate, after "Senator Robert Dole's compromise," that a subsection (b) was added to "provide guidance about how the results test is to be applied." *Id.* at 399 n.26, 395. As Senator Dole made clear, "an added benefit of the compromise is that it makes clear that the *White* approach should apply by directly codifying language from that decision in Section 2," which helped because the "House report . . . was ambiguous as to whether to the *White* test or the Section 5 effects test should apply." 2 Senate Hearings 80. Again, while there may have been ambiguity about how closely the new Section 2 results test would follow the existing Section 5 effects standard, no one suggested that the Section 5 standard was being modified or expanded to encompass Section 2 results. As noted, this point was made explicit by the Edwards-Levitas colloquy when the Senate Bill, with the new subsection (b), was returned to the House.

If no federal law invalidates Bossier Parish's redistricting system, there is simply no bar to enforcing this ordinance and holding elections under it. And if the three-judge court finds that the redistricting plan is free from invidious purpose and retrogression, the preemptive constraints of Section 5 have been lifted and no federal law trumps the Board's plan. If the three-judge court decides to also issue an advisory opinion on Section 2, this can be of no legal consequence because nothing in the Voting Rights Act makes such a Section 2 determination a prerequisite to implementing a jurisdiction's voting changes and, in any event, the three-judge court has no subject matter jurisdiction to rule on any Section 2 violation. Accordingly, even if every Member of Congress clearly said they *wanted* the three-judge court to deny preclearance to laws that satisfied Section 5's substantive precepts, there is simply no law which would provide the court with the authority to do so and, indeed, any such action would be entirely contrary to the statutory language Congress did enact.[15]

3. According to the Solicitor General, a Congress which engaged in one of its most extensive and divisive debates over whether Section 2 should be amended to incorporate the ambiguous "results" test, nonetheless "intended" to broadly expand the substantive scope of Section 5 beyond the "retrogression" standard in *Beer* by incorporating the controversial "results" standard into the Section 5 preclearance process. Congress manifested this "intent," albeit unaccompanied by any statutory amendment *implementing* that intent, in two ways.

First, Congress conveyed its understanding that *Beer*, of all cases, had *already* "authorized" Section 5 objections for

---

[15] Two Justices in *Morse v. Republican Party of Va.*, ___ U.S. ___, 116 S. Ct. 1186, 1201 (1996) (Opinion of Stevens, J.) opined that any voting "practices and procedures [that] fall within the scope of § 2, . . . must also be subject to Section 5." Of course, the question of whether "for threshold coverage, §§ 2 and 5 have parallel scope" is an entirely separate issue from whether the substantive legality of those procedures need be adjudged by the same standards. *Holder*, 114 S. Ct. at 2589 (O'Connor, J., concurring).

violations of the *White v. Regester*, 412 U.S. 755 (1973), "results standard" embodied in Section 2. *See* U.S. Br. 37-38. *Beer* purportedly authorized Section 5 "results" objections in the following sentence: "[A]n *ameliorative* new legislative apportionment *cannot violate § 5* unless the new apportionment itself so discriminates on the basis of race or color as to violate the *Constitution*." *Beer*, 425 U.S. at 141 (emphasis added). Perhaps realizing that this sentence did not clearly convey that ameliorative redistricting plans were *impermissible* if they had a negative "*result*," Justice Stewart eliminated any ambiguity by citing *White v. Regester* at the end of a string cite in a footnote explaining, in *dicta*, why the plaintiffs "could [not] rationally" argue that a Louisiana redistricting plan's failure to create compact black-majority districts "remotely approach[ed]" establishing a constitutional violation. *Id.* at 142 n.14. One sentence in a 1982 Senate Report footnote stated that *Beer* held that an ameliorative change "is *not* objectionable" unless the "change 'itself so discriminates *on the basis of race* or color as to violate the *Constitution*,' " thus somehow suggesting that Section 5 authorized a "results" objection under *Beer*. S. Rep. 12 n.31 (1982) (quoting *Beer*, 425 U.S. at 141) (emphasis added).

This is not a remotely plausible interpretation of *Beer* or the sentence citing it in the Senate Report footnote. *Beer*'s explicit holding and rationale was that Section 5 "effect" reached only retrogressive changes and therefore did not, contrary to the holding of the lower court and the reasoning of Justice Marshall's vigorous dissent, reach *White v. Regester* results. *See Beer*, 425 U.S. at 157-63 (Marshall, J., dissenting). The sentence in *Beer* cited by the United States does not reverse that holding, but simply makes the obvious point that intentionally discriminatory action is prohibited by Section 5. Actions taken "*on the basis of race*" are purposefully discriminatory and the Constitution only forbids purposeful discrimination. *Washington v. Davis*, 426 U.S. 229, 239-41 (1976). Moreover, the *Beer* court stated that such unconstitutional discrimination would "violate *§ 5*." *Id.* at 141 (emphasis

added). And, after *Beer* established the retrogression standard, the only way an ameliorative voting change could violate Section 5 would be if it was motivated by the discriminatory "purpose" outlawed by that statute.

More to the point, even if Justice Stewart (the author of *Bolden)* was confused about whether the Constitution reached unintentional discrimination in 1976, Congress well understood in 1982 that the Constitution embraced the purpose standard in voting cases and elsewhere. The whole point of amending Section 2 was, of course, to establish a statutory "results" test that was different from the "exceedingly difficult" and "subjective" purpose standard that *Washington v. Davis* and *Bolden* had established for the Constitution. *See Thornburg v. Gingles*, 478 U.S. at 35, 71-74; S. Rep. at 28. Thus, in 1982, it was impossible to have understood *Beer*'s reference to the constitutional standard, or the Senate Report's quotation of that reference, as denoting anything other than the purpose test enunciated in *Bolden* and *Davis*, which differed so markedly from the *White v. Regester* "results" showing. Even if this were at all ambiguous, the *Senate Report itself* states as clearly as possible that Congress was *deliberately differentiating* the *White* "results" standard of Section 2 from the Section 5 "effects" standard.[16] Thus, *no one* thought that "purpose" meant "results"; no one thought "effect" meant anything other than retrogression and no one thought *Beer* held that "purpose" or "effect" meant "results."

To be sure, the Committee staffers who authored the Senate Report then went on to express their desire that the Attorney General (and perhaps three-judge Section 5 courts) object not only to laws which violate the substantive scope of Section 5, but "also" to those that "violate Section 2." S. Rep. at 12 n.31. But the relevant point is that neither this sentence, nor any other in the legislative history, purports to suggest

---

[16] "By referring to the 'results' of a challenged practice and by explicitly codifying the *White* standard, the amendment distinguishes the standard for proving a violation under Section 2 from the standard for determining whether a proposed change has a discriminatory 'effect' under Section 5 of the Act." S. Rep. at 68.

that *Section 5* outlawed the "results" proscribed by Section 2. To the contrary, if Section 5's substantive requirements did mirror those of Section 2, then there could be no such thing as a change which satisfied Section 5 but nonetheless violated Section 2. That being so, the desires expressed in the Senate Report concerning how Section 5 was to be enforced are meaningless – it is neither law nor even legislative history. "[U]nenacted approvals, beliefs, and desires are not laws." *Puerto Rico Dep't of Consumer Affairs v. Isla Petroleum Corp.*, 485 U.S. 495, 501 (1988). As in *Isla Petroleum*, "[t]here is no text here . . . to which expressions of . . . intent in legislative history might attach." *Id.* at 501.[17] The only purpose of legislative history is to illuminate the meaning of ambiguous statutory language, and the Senate Report does not purport to relate to any statutory language, even assuming there was some ambiguity in Section 5.

For essentially the same reason, the fact that the Justice Department has issued administrative guidelines saying the Attorney General will enter a Section 5 objection when "necessary to prevent a clear violation of amended section 2" is of no consequence. 28 C.F.R. § 51.55(b)(2). Assuming *arguendo* that the Attorney General's interpretation of the Voting Rights Act is entitled to any deference in these circumstances,[18] the

---

[17] Even if the Senate Report did purport to interpret the meaning of Section 5, it could not affect the construction of that provision because Section 5's language was not changed in 1982. In *Pierce v. Underwood*, 487 U.S. 552, 567 (1988), this Court held that a Committee Report setting forth a very definite view of a 1980 civil rights attorneys' fee statute, at the time the statute was reenacted in 1985 without change to its language, was irrelevant to interpreting the statute's meaning because, "[q]uite obviously, reenacting precisely the same language would be a strange way to make a change."

[18] As the district court correctly noted, such deference is not appropriate given that an action seeking preclearance may be brought in court in the first instance. *Litton Fin. Printing Div. v. NLRB*, 501 U.S. 190, 203 (1991). Furthermore, the Department's guidelines are just that and are not entitled to the deference afforded regulations. *See, e.g., General Elec. Co. v. Gilbert*, 429 U.S. 125, 141 (1976); *Ansonia Bd. of Educ. v. Philbrook*, 479 U.S. 60, 69 n.6 (1986) (noting that administrative "guidelines are properly accorded less weight than administrative regulations declared by Congress to have the force of law."). More important, as in *Miller*, deference should not be accorded the Department's interpretation given the serious constitutional concerns it raises. 115 S. Ct. at 2491 (citing *Edward J. DeBartolo Corp. v. Florida Gulf Coast Bldg. & Constr. Trades Council*, 485 U.S. 568, 574-75 (1988)). *See also National Labor Relations Bd. v. Catholic Bishop*, 440 U.S. 490 (1979). Not only is the Equal Protection Clause implicated by the Department's maximization policy, but also this expansion of Section 5 would cause serious concerns under the Tenth Amendment and federalism principles given the additional burdens on States. *Miller*, 115 S. Ct. at 2493.

relevant guidelines do not purport to "interpret" anything in the Voting Rights Act or Section 5. Rather, in stark contrast to the argument the Justice Department advances in this Court, its guidelines clearly state that a "change affecting voting is considered to have a discriminatory effect under Section 5 if it will lead to a retrogression in the position of members of a racial or language minority group. . . . " 28 C.F.R. § 51.54(a). Thus, the Justice Department concedes that effect encompasses only retrogression, but not Section 2's "result." The guidelines then go on to simply announce that even if a change satisfies Section 5, the Department will withhold preclearance if the change clearly violates Section 2. 28 C.F.R. § 51.55(b)(2). Thus, the guidelines nowhere contend that Section 5 reaches changes with discriminatory results, but quite candidly acknowledge that they must rely on Section 2 to invalidate such nonretrogressive changes. Since the Court will not defer to an agency interpretation of *unambiguous* statutory language, it obviously cannot defer to agency policies that concededly rest on no statutory language.[19] *See*

---

[19] Perhaps the United States' silliest argument is that this Court should give weight to the fact that a House Subcommittee in *1987* "endorsed" an Attorney General's Guideline that resembled the Justice Department's current guideline on the interaction of Section 2 and Section 5. U.S. Br. 40-41. The fact that a handful of Representatives from a different Congress, who were not amending the Voting Rights Act, viewed favorably an Executive Branch enforcement policy says nothing about

Presley v. Etowah County Comm'n, 502 U.S. 491, 509 (1992) (refusing deference to the Attorney General because Section 5 "unambiguous[ly]" does not cover changes to decisionmaking authority).

Moreover, it is a cardinal "rule of statutory construction that if Congress intends to alter the 'usual constitutional balance between the States and the Federal Government,' it must make its intention to do so 'unmistakably clear in the language of the statute.' " *Will v. Michigan Dep't of State Police*, 491 U.S. 58, 65 (1989). *See New York v. United States*, 505 U.S. 144, 171 (1992); *Pennsylvania v. Union Gas Co.*, 491 U.S. 1, 7 (1989); *Pennhurst State School & Hosp. v. Halderman*, 465 U.S. 89, 99 (1984). The United States' attempt to increase Section 5's burden on the states emphatically flunks this stringent test since there is no "language of the statute" suggesting that Section 2 is incorporated into Section 5, much less unmistakably clear language to this effect.[20]

---

congressional intent five years earlier. *Blanchette v. Connecticut Gen. Ins. Corp.*, 419 U.S. 102, 132 (1974); *Pierce*, 487 U.S. at 566 ("[I]t is the function of the courts and not the Legislature, much less a Committee of one House of the Legislature, to say what an enacted statute means.") If we are wrong in this, however, we respectfully submit that the Court is obliged to solicit the views of the *current* House Subcommittee on Civil and Constitutional Rights, who are entitled to similar deference and might well have a very different view of the Justice Department's Section 2 and "maximization" policies.

[20] Abandoning any pretense that their argument is supported by any federal law, the United States makes the shocking suggestion that, *even if the Voting Rights Act does not authorize any such objection*, Section 5 courts may, in the exercise of their "equitable discretion," enjoin state law practices merely because they offend the Court's view of the "public interest." U.S. Br. 34-35. While district courts exercising the equitable authority granted by 28 U.S.C. § 2201 obviously "may," pursuant to virtually unreviewable "discretion," *refuse to adjudicate* declaratory judgment actions brought before them, this plainly has no application to the duties of courts exercising the extraordinary and unique powers under *Section 5*. As the correlative responsibility of the Attorney General reflects,

We note finally that the appellants determined twisting of Section 5 is wholly unnecessary to protect any voting rights of minorities guaranteed by the 1982 Voting Rights Act. Obviously, if any jurisdiction violates any Section 2 rights, much less commits a "clear" violation, the Justice Department and private intervenors can promptly bring a Section 2 lawsuit to swiftly end any such deprivation.[21] Here, the Board's

---

Section 5 courts are not *permitted* to issue a declaratory judgment under Section *2201*, they *must* "expeditious[ly]," *Morris v. Gressette*, 432 U.S. 491, 504 (1977), issue such a declaratory judgment under the duties imposed by *42 U.S.C. 1973c*, because submitting jurisdictions are "*entitled* to preclearance," *Lockhart*, 460 U.S. at 134, to relieve the *temporary* "suspen[sion of] new voting regulations pending scrutiny by federal authorities," *South Carolina v. Katzenbach*, 383 U.S. 301, 334 (1966), *unless* the court finds that the change has the prescribed "purpose or effect." *Cf.* 42 U.S.C. § 1973c (Attorney General has 60 days to object). If the Section 5 courts truly did enjoy the discretion granted by § 2201, they could permissibly refuse to relieve Section 5's preemption of state laws for virtually any reason, including "inconvenience," even if the changes plainly did not violate either Section 5 *or* Section 2. 10A Wright & Miller, *Federal Practice and Procedure* § 2759. Needless to say, this would be blatantly unconstitutional. *South Carolina v. Katzenbach*, 383 U.S. at 335-36. But even if the specious analogy to Section 2201 is accepted, the United States argument is still unavailing because § 2201 only authorizes district courts to *refrain from resolving* the potential controversy and thus maintaining the *status quo* where the presumptively valid state law remains in effect. It obviously does not empower district courts to *issue* a declaratory judgment that the state law satisfies the federal commands with which it allegedly conflicts, but then nonetheless enjoin the state law because it allegedly offends another law over which the court has no jurisdiction, in order to serve the "public interest." Yet the Justice Department seeks just such an expansion of Section 5 courts' substantive powers (and necessarily, then, its *own* power) by arguing that a court may declare compliance with Section 5's purpose and effect, but then enjoin the practice due to a perceived Section 2 violation, all in the name of the Court's inherent "discretion" to vindicate the public interest.

[21] In this regard, the United States suggests that it would be "anomalous" if courts resolving Section 5 questions could not also adjudicate Section 2 disputes. But any such "anomaly" is, of course,

redistricting plan plainly did *not* violate Section 2 because there was no "reasonable alternative" benchmark plan that was either "compact" or did not subordinate traditional districting principles. *Holder*, 114 S. Ct. at 2589 (O'Connor, J., concurring); *Gingles*, 478 U.S. at 50. More important, as shown above (*infra* p. 3-5), appellants would be utterly unable to prove any racial bloc voting by white or black citizens in *local* Bossier Parish elections and the *one* "exogenous" *state judicial* race (held not just in Bossier Parish), where racial bloc voting was found, obviously cannot show that whites "usually" defeat black-preferred candidates. *Gingles*, 478 U.S. at 51. Thus, the Justice Department could never have mounted a successful Section 2 suit, particularly since the Fifth Circuit uses a more stringent test for bloc voting than the *Gingles* plurality, which is precisely why the Department has never challenged the Police Jury plan *identical* to the "intentionally discriminatory" School Board plan that so "clearly" violates Section 2. *See, e.g., League of United Latin Amer. Citizens v. Clements*, 999 F.2d 831,

inherent in the fact that, as this Court has repeatedly confirmed, the two statutes have different substantive standards. (*See infra* p. 13) The entities covered by Section 2 and Section 5 are different, the burdens of proof are different, the benchmarks for measuring racial impact are necessarily different, the courts which adjudicate such disputes are different, the triggering mechanisms ("change") for coverage are different, and most important, Section 5 imposes unique burdens on sovereign state governments. Therefore, it would be quite "anomalous" indeed if Section 5 did *not* have a more "limited substantive goal" than the generally applicable Section 2. *Vera*, 116 S. Ct. at 1963. Moreover, it is only by *accepting* appellants' argument that this Court would authorize "relitigation" and potentially conflicting judgments. *See* U.S. Br. 24. If a Section 5 court were, after a full trial, to affirmatively find *no* Section 2 violation and grant preclearance, the jurisdiction would have no *res judicata* defense to a subsequent Section 2 suit because Section 5 clearly states that neither the Attorney General's preclearance "nor a declaratory judgment entered under this section shall bar subsequent action to enjoin enforcement of [the voting change]." 42 U.S.C. § 1973c.

850-55 (5th Cir. 1993) (requiring consideration of *nonracial causes* of racial bloc voting).[22]

II. The Court Below Considered All Evidence Relevant To Section 5 Purpose And Only Rejected Evidence Relevant Solely To Section 2

The district court opinion clearly states, "[b]ecause we hold . . . that section 2 of the Voting Rights Act . . . has no place in this section 5 action, much of the evidence relevant *only* to the section 2 inquiry is not discussed in this opinion." App. 9a n.6 (emphasis added). So far as we can discern, appellants do not maintain that this constituted legal error if Section 2 was not properly before the court below. Neither appellant argues in this Court that *all* evidence relevant to establishing a Section 2 "results" violation is relevant to the Section 5 purpose inquiry, nor do they advance the *non*

[22] Appellant's Procrustean attempt to force Section 2 litigation into the Section 5 proceeding is also wholly unworkable because of the two statutes' differing evidentiary burdens. And even if this Court were inclined to rewrite Section 5's plain requirements and place the Section 2 burden on the United States, this would merely complicate the submitting jurisdiction's task because they would have to *await* the United States' discovery and presentation of complex evidence concerning racial bloc voting, and all the voluminous "Senate Report factors" before it could "rebut" this enormous evidentiary showing. *See Gingles*, 478 U.S. at 44-45 (listing "nonexclusive" Senate Report factors and "stress[ing]" that "other factors may also be relevant."). Moreover, the three-judge court "must" examine *all* such "evidence in the totality of circumstances," because Section 2 violations were "intended by Congress to be judgments resting on comprehensive, not limited, canvassing of relevant facts." *Johnson*, 114 S. Ct. at 2657. Consequently, the extraordinary confusion and delay engendered by injecting Section 2 issues into Section 5 cases would, as a practical matter, preclude any jurisdiction from seeking preclearance from the Section 5 courts, since timely resolution is essential under Section 5, particularly in the redistricting context. This is, of course, the Justice Department's intended result, since it would then become the sole practicable gateway for all Section 5 submissions and would have to "prove" a Section 2 violation only to *itself*.

sequitur that the court should have considered that subset of Section 2 evidence that is "irrelevant" to Section 5 purpose.

Consequently, in order to manufacture a "legal error" in this straightforward "clearly erroneous" case, appellants distort beyond recognition the legal principle actually announced by the district court and devote the bulk of their briefs to attacking the straw man thus created. Specifically, they argue that *some* evidence is relevant to both Section 2 and Section 5 violations and that the court below excluded probative Section 5 purpose evidence solely because it was also relevant to establishing a Section 2 violation. Appellants provide two examples of evidence which was allegedly so excluded: the racial impact of the Bossier Parish's redistricting plan and the official history of racial discrimination in Louisiana.

While we certainly agree that courts – in Section 5 proceedings or elsewhere – should not exclude evidence probative of the legal question being resolved simply because it is also relevant to another legal issue, the district court did not in word or deed so exclude any such evidence probative of the Section 5 purpose inquiry because it also shed light on the Section 2 question. Any suggestion that the court did reject evidence relevant to *both* Section 2 and Section 5 is, of course, irreconcilable with the court's plain statement that it was not considering "evidence relevant *only* to the Section 2 inquiry." App. 9a n.6 (emphasis added). Moreover, in applying this standard, the court did consider the impact of the Board's redistricting plan and, indeed, devoted most of its opinion to explaining why that alleged impact did not reflect the racially discriminatory purpose. To be sure, the court below did not yet again recite the familiar litany of the Louisiana state legislature's shameful prior discrimination against black voters, for the very good reason that this history sheds absolutely no light on the Bossier Parish School Board's purpose in adopting its redistricting plan. Indeed, the court below's method of analyzing the Section 5 discriminatory purpose issue mirrors precisely the analysis employed by this Court to resolve the same issue in *Miller* and *Shaw II*.

1. In *Miller*, as here, the Justice Department strenuously argued that its Section 5 "purpose" objection to the

initial Georgia redistricting plan was well-founded because there was a "history of discrimination in voting" continuing "into the 1980's," as well as substantial "racial bloc voting" and the fact that "black candidates had in the past virtually never been successful." Brief of United States filed in *Miller v. Johnson*, at 32-33. As here, the Justice Department argued that such evidence was probative under *Rogers v. Lodge*, 458 U.S. 613 (1982) and the *Arlington Heights* factors for "racial impact" and the "historical background of the decision." *Id. See Village of Arlington Heights v. Metropolitan Hous. Dev. Corp.*, 429 U.S. 252, 266-67 (1977). As noted, without any reference or inquiry into these factors, the Court found the Justice Department had "no reasonable basis" to infer a discriminatory purpose. *Miller*, 115 S. Ct. 2492. Rather, the Court found no such purpose solely on the grounds that the district court had "accepted" the Attorney General's "detailed explanation [that] the initial decision not to enact the max-black plan" was due to its "policy of adhering to other districting principles." *Id.* Similarly, in *Shaw II*, the Court found the Justice Department's "purpose" argument "insupportable" because North Carolina initially rejected the "second minority district" in order "*to keep precincts whole*, to avoid dividing counties into more than two districts . . . " and other neutral redistricting principles. 116 S. Ct. at 1904 (emphasis added). Again, in reaching this determination, the Court viewed as irrelevant North Carolina's well-documented history of racial discrimination and racially polarized voting. *See, e.g., Gingles*, 478 U.S. at 38, 59.

Thus, in both cases, this Court resolved the Section 5 purpose inquiry solely by determining whether there were legitimate and credible reasons for rejecting the plan with the additional minority district and eschewed as irrelevant the Section 2 evidence concerning prior voting discrimination and racial bloc voting. As noted, the *Shaw II* opinion also explicitly expressed its disagreement with the notion "that a showing of discriminatory effect under § 2, alone, could support a claim of discriminatory purpose under § 5." 116 S. Ct. at 1904 n.6. Since this is precisely the analysis articulated and followed by the district court (albeit in far greater detail),

it is impossible to conclude that it erroneously excluded probative Section 5 evidence.[23]

2. Apparently recognizing this, appellants seek to mischaracterize the district court opinion as holding that otherwise probative evidence of discriminatory purpose somehow becomes incompetent because it also is relevant to Section 2. The district court said no such thing, as is made particularly clear by analyzing the argument that the Justice Department *actually* advanced below.

As part of its ongoing effort to have Section 5 courts convert their analysis of the purpose of a voting change into a full-blown Section 2 trial of the underlying system being changed, the United States argued that, even if Section 2 is not properly an issue before the Court, the Court should nevertheless consider and rule upon "*all* the evidence . . . demonstrating how clear the Section 2 violation is." U.S. Post-Trial Br. 36. *See infra* note 5. The Court was supposed to engage in this seemingly pointless inquiry because, if the Court found a Section 2 violation, it could use the "School Board's . . . awareness that the proposed plan might violate Section 2" to conclude that the Board had a "discriminatory purpose in adopting the proposed plan." *Id.* It also identified

---

[23] In a truly pathetic attempt to suggest that the district court did not follow *Miller*'s analysis, and that *Miller* considered Section 2 "results" evidence, the Solicitor General maintains that *Miller* did consider such results because "the Court considered the [redistricting] plan's ameliorative impact." U.S. Br. 22 (citing 115 S. Ct. at 2492). To be sure, the *Miller* Court, like the court below, did point out that the initial Georgia redistricting "plans were 'ameliorative' and could not have violated § 5's non-retrogression principle." *Miller*, 115 S. Ct. at 2492. App. 10a ("And, all parties agree that the School Board's proposed redistricting will not have a retrogressive effect."). Both courts then considered whether the choice of the redistricting plan with a greater adverse impact (less "safe" black seats) reflected a discriminatory purpose. Neither court, however, examined the Section 2 results evidence concerning racial bloc voting or prior historical discrimination that the Justice Department urged upon both courts.

one subset of Section 2 evidence – "the history of discrimination in Bossier Parish, especially discrimination affecting the right to vote" – as "independently relevant to the purpose issue." *Id.* Thus, the Justice Department drew a clear distinction between that subset of Section 2 evidence that was "independently relevant" on its own terms to Section 5 purpose and the other "Section 2 evidence" that should be considered to resolve whether there was a Section 2 violation.

The court below quite properly rejected the Justice Department's effort "to do indirectly what it cannot do directly" by refusing to conduct "full-blown section 2 litigation" on an issue not properly before it. App. 23a (quoting *New York v. U.S.*, 874 F. Supp. at 399). This in no way implies the very different proposition that the court rejected evidence that is "independently relevant" to the Section 5 purpose inquiry simply because it might also be relevant to a Section 2 violation. As noted, the court's explicit characterization of "section 2 evidence" as "evidence relevant *only* to a Section 2 violation" eliminates any potential ambiguity on this point. Moreover, *every* statement by the district court further demonstrates that it was rejecting only the Justice Department's back-door effort to introduce all Section 2 evidence by equating the Section 2 violation with discriminatory purpose, but was not making the indefensible ruling that otherwise material evidence of purpose somehow should be excluded because it was also relevant to Section 2.[24] Appellants can

---

[24] The court stated that it would not resolve "alleged section 2 *violations*" even if advanced by appellants "under the guise of 'purpose' evidence." App. 23a. (emphasis added). It did *not* say it refused to consider legitimate evidence of Section 5 purpose because it also might be relevant to establishing a Section 2 violation. Quoting *Miller*, *Texas*, and *New York*, it noted that resolving whether a "voting-procedure change[ ] . . . " was motivated by a discriminatory purpose is a much narrower and different inquiry than "full-blown section 2 litigation" challenging "the existence of an allegedly discriminatory system." App. 23a. In light of these "differing standards," the court, like this Court in *Shaw*, would not permit inapposite "section 2 evidence to prove discriminatory purpose under Section 5." App. 23a-24a.

point to nothing in the opinion which suggests the district court's exclusion of the "section 2 evidence" urged upon it by the U.S. was accompanied by an additional, *sub silentio* exclusion of evidence relating to *both* "section 2" and Section 5.[25] Thus, like the Section 5 courts in the *New York* and *Texas* cases, the court below simply rejected the United States' facially implausible argument that the existence of a Section 2 violation in the underlying system, or the submitting jurisdiction's "awareness of" that potential violation, somehow established discriminatory purpose in their choice of competing redistricting plans; thus requiring consideration of "all" Section 2 evidence. Indeed, appellants now concede that *Miller*, *New York* and *Texas* did not purport to exclude relevant purpose evidence because it might come under the rubric of Section 2 proof. U.S. Br. 21; A-I Br. 24. They therefore cannot explain how the court below's direct quotation of these holdings somehow was intended to adopt a different rule.

3. Moreover, the district court's consideration of the evidence before it plainly shows it discussed all probative evidence and did not erect some prophylactic ban against evidence potentially relevant in a Section 2 case. Appellants repeatedly maintain that the "court specifically refused to consider the discriminatory effect of the challenged redistricting plan on minority voters" because of its purportedly reflexive aversion to anything that looked like Section 2 evidence. U.S. Br. 17; *see* A-I Br. 24. Appellants cannot cite any passage in the district court containing this "specific refusal," however, because it is wholly a figment of their imaginations.

To the contrary, the district court quite clearly, thoroughly and directly considered the adopted redistricting

---

[25] The district court twice used the phrase, "section 2 evidence" without explaining again that this referred to evidence "relevant only" to the Section 2 violation. But the court had already provided this explanation and, even when ripped from its context, the phrase "section 2 evidence" does not connote evidence relevant to *both* Section 2 and Section 5. Moreover, as noted, this discussion was in a context where the Justice Department had drawn a clear distinction between "section 2 evidence" and evidence "independently relevant" to Section 5 purpose.

plan's effect on minority voters. Indeed, it devoted virtually all of the relevant part of the opinion to resolving precisely this question. To be sure, the court did not engage in the ritualistic formula of independently listing "impact" as a "important starting point" for analysis under *Arlington Heights*. Rather, like *Miller*, *Shaw II*, and virtually all other discriminatory purpose opinions, the court cut directly to the dispositive question "started" by the existence of impact: did the Board have "legitimate, nondiscriminatory motives" for adopting its plan over the maximization plan offered by the NAACP, *i.e.*, a plan with less adverse impact. App. 27a n.14. It would, of course, have been irrational and meaningless to compare the relative merits of the NAACP plan and the Board's plan unless the court was considering the alleged negative impact of the Board's plan (as compared to the NAACP plan) in resolving whether it was adopted "because of" that impact. *Personnel Adm'r v. Feeney*, 442 U.S. 256, 279 (1979) ("Discriminatory purpose . . . implies that a decisionmaker" selected a course of action " 'because of,' not merely 'in spite of,' its adverse effects upon an identifiable group."). The court assumed that fewer safe black districts negatively affected black voters' electoral opportunities, but found that such an impact was not violative of Section 5 because the failure to create such safe districts was done "in spite of" that impact. *Id.* Thus, the court below engaged in precisely the sort of inquiry this Court has used to resolve all questions of discriminatory purpose, in the voting rights context and elsewhere.

To be sure, in assessing whether the racial impact was justified because it was free of invidious purpose, the court below did simply *assume* that fewer "safe" black seats negatively affected black voters. Accordingly, like *Miller* and *Shaw II*, the court did not trudge through the *antecedent* evidence of racial bloc voting, the depressed socio-economic status of blacks in the Parish, Louisiana's familiar history of racial discrimination, or any of the similar Section 2 evidence appellants urged upon it. But all such evidence is relevant only to the question of whether the Board's redistricting plan had an adverse impact or "result," which the district court

assumed it did, and says nothing about the Board's purpose in choosing that plan.

As the *Gingles* preconditions reflect, the probative value of racial bloc voting and minority electoral success is to "prove that the challenged electoral mechanism [an at-large plan or single-member plan with majority white districts] impairs the [minorities'] ability 'to elect.' " *Gingles*, 478 U.S. at 48-49 n.15. Similarly, the primary relevance of "historical discrimination" is to show that such state action contributed to "restrict[ing] the present opportunity of blacks effectively to participate in the political process." *Rogers v. Lodge*, 458 U.S. at 625. *See Gingles*, 478 U.S. at 69 ("Voting Rights Act [is intended] to eradicate inequalities in political opportunities that exist due to the vestigial effects of past purposeful discrimination.").[26] Accordingly, such evidence is designed to show that, in light of "past and present reality," the electoral processes are not "equally open" to minority voters, and thus seemingly neutral devices, such as at-large systems, actually have a negative impact on minority voters. *Rogers*, 458 U.S. at 622 (quoting *White v. Regester*, 412 U.S. at 769-70). Moreover, in keeping with the avowed purpose of amending Section 2 to replace the subjective "intent" inquiry with the objective "results" analysis, virtually all other Section 2 evidence is also intended to show that a "certain electoral law, practice or structure interacts with social and historical conditions to cause an inequality in the opportunities enjoyed by black and white voters. . . . " *Gingles*, 478 U.S. at 47. *See id.* at 44-45 (listing Senate Report factors). However, if a community is free of racial bloc voting and historical suppression of minorities, "minority citizens are able to form coalitions with voters from other racial and ethnic groups, having *no need* to be a majority within a single district." *Johnson*, 114 S. Ct. at 2661 (emphasis added). Put simply, then, the Section 2 evidence tells us *why* a black majority district is *needed* to elect black candidates, but it

---

[26] *See also Rogers*, 458 U.S. at 624-26.

says nothing about *why* a black majority district was *not created*.

The district court was thus properly indifferent to whether this Section 2 evidence might show that Bossier Parish was an electoral community where white majority districts actually had the "result" of diluting minority voting strength, since it presumed that white majority districts had such an effect in resolving the only relevant purpose question. Consequently, the evidence establishing that white majority districts had a negative impact was utterly superfluous or, more accurately, could only *harm* appellants' case by opening up the question of negative impact that the court was prepared to presume existed.

For this reason, the fact that *Rogers* found evidence of racial bloc voting and socio-economic disparities attributable to historical discrimination "relevant" in constitutional challenges to existing at-large systems plainly does not suggest that the courts must analyze such evidence in a Section 5 purpose case. In *Rogers*, in order to meet their burden, plaintiffs needed to *establish* both that the at-large system prevented electoral success and that it had been "maintained for the purpose of denying blacks equal opportunity to the political process in the county." 458 U.S. at 627. Accordingly, the presence of racially polarized voting, depressed black turnout, as well as the causative effect historical discrimination played in such phenomena, was not only "relevant," but *essential* to establishing state-sanctioned minority vote dilution. Such evidence was necessary to show that the facially neutral at-large system had the foreseeable impact of perpetuating and exacerbating "the lingering effects of past discrimination," a *prerequisite* to finding discriminatory purpose. *Id.* at 626.

In a Section 5 case, however, there is no need to consider this antecedent evidence establishing the foreseeable negative impact of majority white districts if the Court *presumes* such foreseeable negative impact, in determining whether such impact was the government's purpose. In a typical constitutional challenge brought against a political jurisdiction such as the *Rogers* case, *plaintiffs* must *establish* that the existing

electoral conditions render facially neutral, majoritarian electoral systems dilutive of minority voting strength, as a prerequisite to establishing that dilution was the government's deliberate purpose. In a Section 5 case where the submitting jurisdiction has the burden, it is assumed, due to the racial polarization and prior discrimination that renders the jurisdiction subject to Section 5 preclearance, that such racially-charged electoral conditions exist and white majority districts will thus have a foreseeable impact. Thus, courts proceed directly to the only relevant question of whether such impact is motivated by a discriminatory purpose. Consequently, the district court was entirely correct that evidence concerning current electoral conditions, and prior historical discrimination, was superfluous (unless, of course, the submitting jurisdiction put impact at issue by arguing that white majority districts would have no negative impact because voting is race-blind and minorities had overcome prior discrimination). Thus, we cannot understand how the *appellants* can complain that the district court relieved them of the obligation to establish the *Gingles* preconditions and the ongoing effects of prior official discrimination.

2. This is not to say, of course, that a "series of official actions taken for invidious purposes" by the particular governmental actor is irrelevant to the question whether this specific voting change was motivated by the same invidious purposes. *Arlington Heights*, 429 U.S. at 267. Such "prior bad acts" evidence is generally relevant to show that the decision at issue was part of an intentionally discriminatory pattern. However, none of the "historical discrimination" canvassed by appellants or the dissenting opinion, and eschewed by the district court, is remotely related to, or demonstrative of, prior discrimination by the School Board in this case. Rather, it is simply the familiar recitation of reprehensible actions by the Louisiana state legislature "dating back to the Civil War," which are wholly unrelated to any action specifically undertaken by Bossier Parish, much less the current School Board. U.S. Br. 4-5; A-I Br. 7. Even in a typical case, such "past discrimination cannot, in the manner of original sin, condemn government action that is not itself unlawful." *Mobile*, 446

U.S. at 74. This is particularly true where, as here, the condemned action is performed by "unrelated government officials" such as the state legislature. *Id.* at 74 n.20.

Moreover, the irrelevance of such historical discrimination is particularly obvious in the Section 5 context. All covered jurisdictions, particularly Southern jurisdictions, share the same sorry racial history and that, of course, is why they are subject to Section 5's extraordinary requirements in the first place. *See South Carolina v. Katzenbach*, 383 U.S. at 310-13. More particularly, this history is the reason that these governments are stripped of the normally strong presumption of legitimacy and forced to carry the burden of disproving discriminatory purpose. To add to that already onerous burden by also using that history as a basis for finding a particular governmental unit's discrete decision discriminatory, even when supported by credible nonracial reasons that would be credited if undertaken by Northern jurisdiction, is indeed impermissible "double counting." App. 24a n.12. The fact that the Bossier Parish School Board, like all other Section 5 jurisdictions, is situated in a State with a discriminatory history which the Board is not responsible for and cannot change, simply does not make it "more probable" that it selected a redistricting plan for discriminatory purposes. Fed. R. Evid. 401. This Court therefore properly ignored the existence of such evidence in Georgia and North Carolina when it resolved the discrete Section 5 purpose issue in *Miller* and *Shaw*.

We are left, then, with one species of evidence that appellants maintain does reflect on *this* School Board's discriminatory *animus*: the fact that Louisiana schools were *de jure* segregated and the Bossier Parish school system has not yet been declared unitary. A-I Br. 7-8; U.S. Br. 5-6. Appellants maintain that this is directly probative evidence of the Board's racist actions and that the district court ignored such evidence of "responsiveness" and "historical discrimination" pursuant to its generalized exclusion of all evidence touching on Section 2. Appellants are manifestly wrong on both counts. First, the district court did independently consider the School Board's desegregation activities. App. 34a n.18. While the

court, quite properly, peremptorily dismissed such evidence as reflecting any racial *animus* here, the relevant point is that it did *consider* such evidence. It would not have done so had it already, as appellants erroneously maintain, categorically excluded all probative purpose evidence because such evidence was also relevant to the Section 2 "results" test. On the merits, the fact that the Parish's schools are not perfectly racially balanced due to demographic changes and that an advisory desegregation committee lapsed into disuse 20 years ago is clearly not, as the district court properly found, "in any way related to the School Board's purpose in adopting the Police Jury plan."[27] App. 34a n.18. *Cf. Bolden*, 446 U.S. at

[27] The initial biracial committee last met twenty years ago in 1976, when perhaps one current Board member was serving. This committee was established pursuant to a *consent* decree and was charged with "recommend[ing] to the School Board ways to attain and maintain a unitary system and to improve education. . . . " App. 103a (¶ 111). This plainly implies that it was intended merely to ease the transition to a unitary system, not serve as a permanent governmental bureaucracy. Given this limited role, it is entirely understandable that the interest of the volunteer citizens who served on the committee waned over time. There is nothing in the record suggesting that the Department of Justice, the other *Lemon* plaintiffs or the black community ever complained about its dormancy. The appellants' attempt to draw a discriminatory inference from the establishment and disbandment of a newly constituted biracial committee is equally misguided. In fact, the School Board demonstrated its responsiveness to the black community by *voluntarily* establishing this committee in 1993 at the request of the NAACP. App. 104a (¶ 113). As the district court found, the committee was dismissed when it exceeded its advisory role in achieving a unitary system and instead began to involve itself in matters relating to educational, rather than desegregation, policy. As the Court has often recognized, such policy "is committed to the control of state and local authorities." *See, e.g., Board of Curators of the Univ. of Missouri v. Horowitz*, 435 U.S. 78, 91 (1978); *Milliken v. Bradley* , 418 U.S. 717, 741-742 (1974). Nor is there any evidence suggesting that any of the School Board's attendance lines violate the court's orders. Therefore, the racial imbalance in five schools complained of by the appellants is necessarily attributable to demographic factors over which the School Board has no control and against which it has no duty to countervail. *See*

73-74 (Even *purposeful* discrimination against blacks in employment and public services by the *current* defendant government is "relevant only as the most tenuous and circumstantial evidence of the constitutional invalidity of the electoral system. . . . "). While the Justice Department was apparently intent on litigating their ongoing desegregation case with the Parish, as well as the Section 2 case, in this Section 5 proceeding, the district court's discounting of such desegregation evidence was proper, and certainly not "clearly erroneous."

In sum, the Justice Department has unsuccessfully mounted a sustained campaign to have Section 5 courts strike down legitimate changes to underlying electoral systems on the grounds that the underlying electoral system is racially polarized and has a discriminatory lineage. Since the submitting jurisdictions are not responsible for private citizens' voting patterns or for prior historical discrimination, and since neither those patterns nor that history would be altered *regardless* of which voting change is selected, this evidence is clearly irrelevant to the focused inquiry on *why* the submitting jurisdiction chose the nonretrogressive plan it did.

III. The Court Below's Factual Finding That The School Board Acted Without A Discriminatory Purpose Is Not Clearly Erroneous

Findings of fact, particularly those relating to motive or intent, may "not be set aside unless clearly erroneous." *Pullman-Standard v. Swint*, 456 U.S. 273, 287 (1982).[28] Given

Pasadena City Bd. of Educ. v. Spangler, 427 U.S. 424, 436-37 (1976) (holding that a district court is "not entitled to require [a school board] to rearrange its attendance zones each year so as to ensure that the racial mix desired by the court was maintained in perpetuity"); *Freeman v. Pitts*, 503 U.S. 467, 494 (1992).

[28] *See id.* at 288 ("[Findings] as to the design, motive and intent with which men act are peculiarly factual issues for the trier of fact" (quoting *United States v. Yellow Cab Co.*, 338 U.S. 338, 341 (1949)); *City of*

that the district court's factual findings are amply supported by the record, there is no plausible basis for characterizing its findings as clearly erroneous.

Indeed, once again, there is "no reasonable basis" for appellants' argument that the Board selected the Policy Jury plan in preference to the NAACP alternative because of a discriminatory purpose. *Miller*, 115 S. Ct. at 2492. The Board was offered a choice between two alternative redistricting plans. As the undisputed facts establish, one plan had been precleared by the Justice Department, supported by the black member of the Police Jury's Reapportionment Committee, enhanced minority voting strength and clearly complied with state law and traditional districting principles, such as compactness and maintaining the integrity of municipal, district and precinct boundaries. J.A. 47; J.A. 42. The other alternative concededly constituted a facial violation of state law which the School Board was without power to change, required more than doubling the number of existing precincts, split every municipal boundary in the Parish, grossly departed from the Police Jury districts and created black majority districts that were plainly not compact under any normal definition of that term. J.A. 48-49; plaintiff's Exh. 11. It was further conceded that the sole, not only "predominant," reason for so "subordinat[ing] [traditional] districting principles" was to racially discriminate in favor of black voters. J.A. 260; *Shaw II*, 116 S. Ct. at 1901 (quoting *Miller*, 115 S. Ct. at 2488).

Indeed, so far as we can discern, this case is unique in the annals of discriminatory purpose jurisprudence in that the minority proponents cannot offer a *single nonracial* reason for adopting the minority-enhancing alternative. Appellants cannot cite *one* traditional districting principle in which the

---

Pleasant Grove v. United States, 479 U.S. 462, 469 (1987) (holding that under Section 5, "findings, both as to the purpose [of adopting a voting change] and with respect to the weight of evidence regarding the purpose of the [changes] at issue, are findings of fact that we must accept unless clearly erroneous"). *Anderson v. City of Bessemer City*, 470 U.S. 564, 573 (1985).

proposed NAACP alternative is superior to the Police Jury plan. Conversely, in several key respects – compliance with political boundaries, maintaining precincts, compactness, compliance with state law – the NAACP maximization alternative is both obviously inferior to the Police Jury plan and, in fact, materially indistinguishable in purpose and effect from the racial gerrymanders this Court has repeatedly struck down as unconstitutional. Indeed, the deficiencies in the NAACP alternative are so apparent that even appellants abandoned it as a viable plan at trial, seeking to substitute the *post hoc* alternative "Cooper" plans (which nevertheless retained all of the deficiencies outlined above).

Moreover, there is no assertion or showing that the Police Jury plan in any way "packs" or "fragments" any concentration of minority voters or otherwise "split (or lumped) minority neighborhoods that would have been grouped into a single district (or spread among several) if the [Board] had employed the same line-drawing standards in minority neighborhoods as it used elsewhere in the jurisdiction." *Johnson*, 114 S. Ct. at 2659. To the contrary, as is demonstrated by the fact that the Police Jury plan was precleared after careful scrutiny by the Justice Department, the plan kept intact any reasonable concentration of minority voters that was feasible under neutral principles and state law. In a Parish with a 20.1% black population, this resulted in the creation of two districts with 45% and 43.7% black populations, respectively, and four districts with black populations of between 21 and 29%. J.A. 47. It merely did not seek, as the NAACP plan concededly did, to unite through a conscious gerrymander widely dispersed black concentrations that never would have been united were their racial composition different.

As even this brief review demonstrates, appellants' real complaint is not that the Board subordinated neutral principles in order to discriminate against minority voters, but that they failed to subordinate such principles in order to discriminate in favor of minority voters. The Justice Department candidly said as much to the district court, when it explicitly argued that if "the Bossier Parish School Board declined to take race into account [to prefer minorities this] would indeed

violate Section 5." App. 24a n.12. As in *Miller* and *Shaw II*, then, the Justice Department expressly equates a failure to maximize with a discriminatory purpose, at least absent some absolutely compelling reason that *necessarily* forecloses maximization. *See, e.g.*, DOJ Objection Letter, App. 156a (School Board "is not free to adopt a plan that *unnecessarily* limits the opportunity for minority voters to elect their candidates of choice.") (emphasis added).

The Court should again reject the Justice Department's attempt to equate racial discrimination with the failure to engage in racially preferential treatment for minorities. Most fundamentally, this is because the assertion that race-blind actions constitute intentional racial discrimination is a classic oxymoron. Somewhat less directly, but no less significantly, basing a "purpose" finding on the failure to engage in race-based redistricting creates an inexorable hydraulic pressure on governments to adopt an unconstitutional racial gerrymander that subordinates traditional districting principles. *Cf. Watson v. Fort Worth Bank and Trust*, 487 U.S. 977, 993 (1988); *Wards Cove Packing Co., Inc. v. Antonio*, 490 U.S. 642, 653 (1989). As this Court has noted, local governments must be given leeway to reconcile the potential tension between the "results" demands of Section 2 with the Constitution's command to avoid race-conscious redistricting that subordinates neutral principles. *Vera*, 116 S. Ct. at 1961; *id.* at 1969 (O'Connor, J., concurring). If this Court were now to require district courts, notwithstanding Rule 52, to infer discriminatory purpose when the government simply rejects a concededly race-conscious gerrymander that violates state law and traditional principles, it will have destroyed that leeway by forcing governments to engage in such gerrymanders. This would be particularly ill-advised because, even assuming there is some inevitable potential tension between Section 2 and the Equal Protection Clause, there is obviously no such tension between the "purpose" requirement of Section 5 and the "purpose" requirement of the Fourteenth Amendment: both are plainly satisfied by racial neutrality towards all groups. Indeed, this Court has already held that such a "race-neutral" plan is the only constitutionally permissible

remedy for violating Section 5's purpose requirement. *Shaw II*, 116 S. Ct. at 1904 n.6 ("Even if discriminatory purpose could be shown, the means of avoiding such a violation could be race-neutral, and so we also doubt that the prospect of violating the purpose prong of § 5 could justify a race-based redistricting plan. . . . "). Since race neutrality is the touchstone of any liability or remedy, it is virtually, if not theoretically, impossible that a redistricting plan which more directly adheres to neutral redistricting standards than the maximizing alternative reflects racial animus, and it is quite impossible to hold a contrary finding "clearly erroneous." As we now show, the plan selected by Bossier Parish was just such a redistricting plan, which cannot be found to violate Section 5 without both redefining discriminatory "purpose" and compelling the adoption of an unconstitutional racial gerrymander.

1. The short, and dispositive, explanation for why the Board had a completely legitimate, nondiscriminatory reason for rejecting the proposed NAACP alternative is that this alternative (or even any variant thereof)[29] facially violated a state law that the Board was powerless to evade. The Board was required to use the precincts created by the Police Jury (and used by the Police Jury for its districts) as the "building blocks" for the Board's districts. Louisiana law is quite unequivocal on this point: "[t]he boundaries of any election district for a new apportionment plan from which members of a school board are elected shall contain whole precincts established by the parish governing authority [i.e., the Police Jury]. . . . " J.A. 265-66. The failure to abide by this

---

[29] Given that the Cooper plans were not even formulated until after the School Board had adopted its plan, they are clearly irrelevant to this proceeding. In any event, these plans clearly subordinate traditional redistricting principles to racial considerations. Even the "best" of these plans splits all but one of the Parish's towns, results in 31 precinct splits and is not compact. J.A. 51. *See* Plaintiff's Exh. 10 (lodged with the Court).

mandatory requirement renders the School Board's redistricting plan "null and void."[30] J.A. 266.

The Police Jury established 56 precincts for this decade in 1991, which the School Board was thus obliged to use to build its own districts. The district lines in the NAACP plan, however, cut 46 of those precincts, some of them more than once, for a total of 65 different precinct splits. App. 29a; Plaintiff's Exh. 11. The appellants seek to portray this as a mere inconvenience. To the contrary, these 65 separate violations of state law rendered the NAACP plan a nullity and did indeed "legally preclude the Board from considering the plan." U.S. Br. 9.

Appellants maintain that *another* entity, the Police Jury, could have helped the School Board evade this state law. What they mean by this is that the School Board would have been in technical compliance with the requirement that their precincts be coextensive with the Police Jury's, if the Police Jury had voluntarily decided to create 65 additional precincts to track the School Board's precincts under the NAACP plan. What appellants cannot provide is any rational, *nonracial* reason why the Police Jury (or the Board) would ever engage in such a bizarre, costly and confusing exercise.

Every objective reason strongly counseled against more than doubling the existing number of precincts in this poor rural parish. This Court has already vividly described the "electoral nightmare" and "multiplied" costs caused by racially-motivated line drawings which required Harris County, Texas to almost double its existing precincts and "thrust voters into new and unfamiliar precinct alignments, a few with populations as low as 20 voters." *Vera*, 116 S. Ct. at 1959. *See Shaw II*, 116 S. Ct. at 1904 (traditional districting principles furthered by "keep[ing] precincts whole"); *Johnson v. Miller*, 864 F. Supp. 1354, 1367, 1376 (S.D. Ga. 1994) (criticizing precinct

---

[30] In an attempt to confuse this issue, appellants state that the Police Jury had modified the precincts used in the 1980's when it adopted its 1991 redistricting plan. This is quite true, but entirely beside the point. No state law prohibits the Police Jury from changing its prior precincts to reflect population shifts and conform with its new districts, but once it has done so, the Board must use those precincts to build its districts.

splits). The situation in Bossier Parish was even worse than that envisioned for Texas and Harris County. The number of precincts would have increased *115%*, from 56 to 121, and 17 of those 65 new precincts would have had less than 20 people in them. Plaintiff's Exh. 11, pp. 1-26. In addition to producing the problems noted in *Vera*, the cost of each new precinct was approximately $850 or, in the aggregate, $55,250, for *every* state, federal and local election.[31] J.A. 171. Finally, but perhaps most important, "cutting across pre-existing precinct lines and other natural or traditional divisions, is not merely evidentially significant; it is part of the constitutional problem insofar as it disrupts nonracial bases of political identity, and thus intensifies the emphasis on race." *Vera*, 116 S. Ct. at 1962.

On a subjective level, of course, the Police Jury (and the Board) never would have believed that such massive, racially-motivated addition of precincts was necessary to secure the Justice Department's Section 5 approval since the Department had just precleared the Police Jury's districts and precincts a year before. Moreover, as the district court noted, the Police Jury had previously "rebuffed the School Board's earlier overtures" for "joint redistricting," and, after the Justice Department objected to the Board's plan, "[o]nce the idea of redistricting the police jury districts was presented, the Police Jury dismissed it real quickly." App. 29a; App. 91a, (¶ 79). After the Justice Department's objection, it is hardly surprising that the Police Jury wanted to maintain the *status quo* since a massive alteration of precinct boundaries, predicated on the need to depart from intentionally discriminatory Police Jury district lines, would have been a damaging admission of the Police Jury's *own* liability. The School Board therefore had every objective and subjective reason not to quixotically request that the Police Jury conspire with it to wreak costly

---

[31] Appellants suggest that such costs could have been potentially reduced through joint polling places for a number of precincts. This would have saved little, however, because the law expressly requires that *each* precinct have at least one voting machine, even if it is in a shared polling place (in order to be able to accurately tally the votes cast in each precinct). La. Rev. Stat., tit. 18 § 1363(A).

havoc on the electoral system, and the Police Jury had every such reason to refuse.

Though appellants must concede that there is no legitimate, nonracial reason for destroying the existing precinct system, they apparently claim that such reasons were *post hoc* pretexts invented by the Board.[32] But the undisputed facts establish that the *contemporaneous* explanation for rejecting the NAACP alternative was that the district attorney and the Board's cartographer both correctly informed the Board that the NAACP's massive precinct splitting was a facial violation of state law. App. 6a; App. 99a (¶ 102). Moreover, although the Police Jury and School Board used different *district* lines for the first time in the 1980's, they had *never* split precinct lines and there is no evidence that any of the redistricting plans submitted for the Board's consideration by its cartographer created such splits. The United States says that precinct splitting in Louisiana is "quite common," but this is a deliberate distortion of the record. While, as the stipulation cited by the Justice Department reflects, differing *district* lines may be "common," appellants' own witness was able to cite only 3 such examples, and all of those apparently were done to

---

[32] They further argue that the district court did not *believe* this pretextual explanation, but erroneously found an absence of discriminatory purpose because the Board "could have" not wanted to destroy precincts. U.S. Br. 30; App. 38. This is plainly untrue. The Court's opinion noted that the *contemporaneous* explanation for rejecting the NAACP plan was the precinct splits. App. 6a. It further noted that the School Board had "offered a host of non-discriminatory reasons for adopting the Police Jury plan." App. 27a. It rejected some offered explanations because they were not "the real reasons," but was "satisfied that at least two of these are 'legitimate' " – "guaranteed preclearance" and "no precinct lines would need redrawing." App. 27a-28a (quoting *New York*, 874 F. Supp. at 400). This plainly demonstrates that the Court was clearly accepting only the "real reasons" motivating the Board at the time of the decision, not manufacturing or crediting untrue *post hoc* rationalizations. When the opinion later said, after canvassing the merits of avoiding precinct splits, that the Board "entirely reasonably could have" desired no precinct splits, it was obviously concluding that the Board's subjective motivation was also objectively credible and important. App. 29a.

accommodate Justice Department objections. J.A. 240; J.A. 137-138. None remotely approached the massive 65 precinct splits of the NAACP plan; the greatest number of splits in other jurisdictions was eight. J.A. 238. Even assuming practices in *other* parishes somehow undermines Bossier Parish's longstanding, uniform practice of preserving Police Jury precincts, the fact that a handful of other parishes buckled to the Justice Department's demands to split a *few* precincts hardly casts doubt on the legitimacy of the Board's adherence to state law or its refusal to engage in futile, costly and irrational efforts to have the Police Jury help it evade this important requirement.

Since it is impossible to create a black majority district without splitting a very significant number of precincts, and since there was neither any rational reason to, nor reasonable hope of, evading the state law prohibition against such precinct splits, this reason alone sufficed for the Board to reject the plan and for the district court to find no purpose. App. 115a (¶ 152); J.A. 167. We nevertheless note that the Police Jury plan had a host of other legitimate nondiscriminatory advantages over the NAACP's proposed racial gerrymandering. In the past two Terms, the Court has accepted adherence to each such traditional redistricting principle as a refutation of any discriminatory purpose finding and found departures from each such principle sufficient to condemn racial gerrymanders.

First, the NAACP's proposed lines were at war with every other political boundary in the Parish. Most obviously, while the School Board plan tracked precisely the Police Jury's districts, the maximization alternative used completely different district lines. Plaintiff's Exh. 11 (first page). Such complete divergence between district lines greatly compounded the "voter confusion" caused by the precinct splits because it prevented "[communities] [from] shar[ing] . . . representatives" with common interests. *Vera*, 116 S. Ct. at 1959; *see Shaw II*, 116 S. Ct. at 1904 (a legitimate nondiscriminatory principle is to "avoid dividing counties into more than two districts."). Similarly, while the Police Jury plan and all prior redistricting plans scrupulously maintained the integrity of municipal

boundaries within the Parish, the maximizing alternative exhibited "utter disregard of city limits" by splitting *all* three towns in the Parish. *Vera*, 116 S. Ct. 1959; *Miller*, 115 S. Ct. at 2484. A black majority district in the northern part of the Parish was not possible unless these small towns were split "in order to capture pockets of [black] residents" living within municipal limits. *Vera*, 116 S. Ct. at 1959.

With respect to compactness, while the School Board's northern district (District 4) is a square, regularly shaped district, the NAACP creates two long, narrow jagged districts (Districts 2 and 12) that are "somewhat hooked-shaped . . . with finger-like extensions" that "wind in a snake-like fashion . . . until it gobbles in enough enclaves of black neighborhoods." *Shaw II*, 116 S. Ct. at 1899; *Vera*, 116 S. Ct. at 1954-55. Similarly, in Bossier City, the NAACP's black-majority and adjacent districts (Districts 1 and 6) are even skinnier, more distended and less compact than the northern districts.[33] This is in contrast, again, to the School Board's

---

[33] Appellants cite to a stipulation that purports to demonstrate the compactness of their proposals for the black-majority district in Bossier City. App. 1, ¶ 36. This stipulation, however, has no bearing on and makes no reference to the plans proposed by the appellants. Instead, when placed in context, it suggests that it was obvious, apparently to some unnamed members of the Police Jury in 1991, that one "reasonably compact" majority-black district could be established within Bossier City. This *subjective* assessment of some of the Police Jurors has no reference to the *objective* feasibility of creating a "reasonably compact" black-majority district in Bossier City. Furthermore, even if the Court were inclined to adopt a broad construction of the stipulation at issue, the facts relating to the stipulation were contested at trial. The parties introduced substantial evidence reflecting on the feasibility of creating a "reasonably compact" majority-black district in Bossier City. *See, e.g.*, Plaintiff's Exh. 11; J.A. 48-49, J.A. 51-52, J.A. 260-61. Thus, the stipulation should be disregarded. *PPX Enter., Inc. v. Audiofidelity*, 746 F.2d 120, 123 (2d Cir. 1984) (a court is entitled to disregard a stipulated fact where "substantial" evidence is presented to contradict such stipulation); *Coastal States Marketing v. Hunt*, 694 F.2d 1358, 1369 (5th Cir. 1983) (asserting that a court has "not only the right but the duty" to relieve a party from a pretrial stipulation where "substantial evidence" is presented to contradict the stipulation).

districts that are quite compact, especially given population concentrations, the bordering river and Parish boundaries. The Plan's departures from compactness are inherently required to create both black majority districts. This is evidenced by the fact that the best version of any such plan, ("Cooper I") was condemned by a federal district court, "as resembl[ing] an octopus, as it stretches out to the nooks and crannies of the parish in order to collect enough black voting age population to create not one, but two majority-black districts in Bossier." J.A. 38. Even a cursory glance at the maps reveals that both black majority districts are far less compact, and more unwieldy, than the Georgia district struck down in *Miller*. *Cf. Miller*, 115 S. Ct. at 2477, 2495.

The only "flaw" appellants seek to identify in the Police Jury plan is that it did not sufficiently provide for "incumbency protection" because it "paired" incumbents in two districts.[34] While the Board may have initially perceived this as a "flaw" in the Police Jury plan, it is certainly not a "flaw" *in relative terms*. As appellants elsewhere argue when it fits their purposes, and as is evident from the NAACP plan's dramatic departure from the 1980's district configurations, that plan would have disrupted incumbents' desired and existing districts more substantially than the Police Jury plan. U.S. Br. 26 n.15. Thus, even if the desire of "representatives [to] select [their] people" should be elevated to the status of a beneficial redistricting principle serving the public interest, the NAACP's plan is worse in this regard as well. *Vera*, 116 S. Ct. at 1954. Thus, contrary to appellants' argument, if incumbency was a "factor usually considered important by the decisionmaker [it did] not strongly favor a decision contrary to the one reached . . . " and thus provides no basis for an "inference of discrimination." U.S. Br. 27 (quoting *Arlington Heights*, 429 U.S. at 267 & n.17). To be sure, some Board members probably did initially resist the Police Jury plan because of the "pairs" and desired a plan that better "protected" everyone. This

---

[34] There is no evidence that the appellants newly-discovered "a school building in every district" rule was ever a redistricting principle in the Parish, or that the NAACP plan adhered to it at all. U.S. Br. at 26-27.

potential defect, from a self-interested perspective, of the Police Jury plan, however, was outweighed by the fact that, among any of the plans arguably consistent with state law and districting principles, the Police Jury plan *alone* "guaranteed preclearance" in the face of the NAACP's opposition. App. 28a. Such accommodation of competing interests hardly suggests a discriminatory purpose, but simply reflects the normal selection process among imperfect alternatives that typifies all redistricting decisions.[35]

CONCLUSION

For the foregoing reasons, the judgment below should be affirmed.

Respectfully submitted,

JAMES J. THORNTON
642 Stoner Avenue
Shreveport, LA 71101
(318) 221-6294

MICHAEL P. MCDONALD
HANS BADER
Center for Individual Rights
1300 19th Street, N.W.
Washington, D.C. 20036
(202) 833-8400

MICHAEL A. CARVIN*
DAVID H. THOMPSON
SHAW, PITTMAN, POTTS & TROWBRIDGE
2300 N Street, N.W.
Washington, D.C. 20037
(202) 663-8000

*Counsel of Record

---

[35] The sum total of appellants' purpose case thus reduces to the complaint that the district court failed to sufficiently discount the Board's appointment of a black member for the only vacancy available and did not put the most nefarious possible spin on certain hearsay statements that Board members allegedly conveyed to the appellant-intervenor and other civil rights advocates in the community. App. 30a-31a. This quibbling over the import (or existence) of, at worst, ambiguous acts and statements is of no consequence because "such questions of credibility are matters for the District Court" and this Court will not "second-guess the district court's assessment of the witness's testimony." *Vera*, 116 S. Ct. at 1957. In any event, as even the dissenting opinion conceded, the Board members' alleged "statements standing alone would certainly be insufficient to show discriminatory purpose." App. 53a.

(10) (9)

Supreme Court, U.S.
FILED
OCT 21 1996
OFFICE OF THE CLERK

Nos. 95-1455 and 95-1508

In the Supreme Court of the United States

OCTOBER TERM, 1995

JANET RENO, ATTORNEY GENERAL OF THE UNITED STATES, APPELLANT

v.

BOSSIER PARISH SCHOOL BOARD

GEORGE PRICE, ET AL., APPELLANTS

v.

BOSSIER PARISH SCHOOL BOARD

ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF COLUMBIA

REPLY BRIEF FOR THE FEDERAL APPELLANT

WALTER DELLINGER
Acting Solicitor General
Department of Justice
Washington, D.C. 20530-0001
(202) 514-2217

24pp

TABLE OF AUTHORITIES

Cases:	Page
Allen v. *State Bd. of Elections*, 393 U.S. 544 (1969)	4, 18
Beer v. *United States*, 425 U.S. 130 (1976)	14, 16, 17
Brown v. *General Services Administration*, 425 U.S. 820 (1976)	17
Busbee v. *Smith*, 549 F. Supp. 494 (D.D.C. 1982), aff'd, 459 U.S. 1166 (1983)	2
Chevron U.S.A. Inc. v. *Natural Resources Defense Council, Inc.*, 467 U.S. 837 (1984)	15
Citizens for a Better Gretna v. *City of Gretna*, 834 F.2d 496 (5th Cir. 1987), cert. denied, 492 U.S. 905 (1989)	7
City of Lockhart v. *United States*, 460 U.S. 125 (1983)	19
City of Mobile v. *Bolden*, 446 U.S. 55 (1980)	4
City of Pleasant Grove v. *United States*, 568 F. Supp. 1455 (D.D.C. 1983)	2
City of Port Arthur v. *United States*, 517 F. Supp. 987 (D.D.C. 1981), aff'd, 459 U.S. 159 (1982)	3
Columbus Bd. of Educ. v. *Penick*, 443 U.S. 449 (1979)	4
Dougherty County Bd. of Educ. v. *White*, 439 U.S. 32 (1978)	15
Garza v. *County of Los Angeles*, 918 F.2d 763 (9th Cir. 1990), cert. denied, 498 U.S. 1028 (1991)	5
Georgia v. *United States*, 411 U.S. 526 (1973)	8, 13-14, 15
International Brotherhood of Teamsters v. *United States*, 431 U.S. 324 (1977)	5
Johnson v. *DeGrandy*, 114 S. Ct. 2647 (1994)	19
Miller v. *Johnson*, 115 S. Ct. 2475 (1995)	2, 5, 6, 19

Cases—Continued: Page

Morse v. *Republican Party of Virginia*, 116 S. Ct. 1186 (1996) 15, 18
Personnel Admin. v. *Feeney*, 442 U.S. 256 (1979) 4
Pullman-Standard v. *Swint*, 456 U.S. 273 (1982) ... 4, 8
Rogers v. *Lodge*, 458 U.S. 613 (1982) 1, 2, 3, 4, 18
Rybicki v. *State Bd. of Elections*, 574 F. Supp. 1082 (N.D. Ill. 1982) 5
Shaw v. *Hunt*, 116 S. Ct. 1894 (1996) 2, 5, 6, 19
Texas v. *United States*, No. 94-1529 (D.D.C. Sept. 27, 1994), summarily aff'd, 115 S. Ct. 1397 (1995) 18
Thornburg v. *Gingles*, 478 U.S. 30 (1986) .. 7, 8, 14, 17, 18
United States v. *Board of Comm'rs*, 435 U.S. 110 (1978) 16
Village of Arlington Heights v. *Metropolitan Housing Dev. Corp.*, 429 U.S. 252 (1977) 2, 4, 5, 9, 10
Washington v. *Davis*, 426 U.S. 229 (1976) 4
Westwego Citizens for Better Gov't v. *City of Westwego*, 872 F.2d 1201 (5th Cir. 1989) 7
White v. *Regester*, 412 U.S. 755 (1973) 14, 16
Will v. *Michigan Dep't of State Police*, 491 U.S. 58 (1989) 17
Yick Wo v. *Hopkins*, 118 U.S. 356 (1886) 5

Statutes and regulation:

Voting Rights Act of 1975, 42 U.S.C. 1973 *et seq.*:
§ 2, 42 U.S.C. 1973 ..... 3, 14, 15, 17, 18, 19, 20
§ 4, 42 U.S.C. 1973b 16
§ 4(b), 42 U.S.C. 1973b(b) 3, 16
§ 4(F)(i), 42 U.S.C. 1973b(F)(i) 16
§ 5, 42 U.S.C. 1973c 3, 5, 6, 13, 14, 15, 16, 17, 18, 20
§ 12, 42 U.S.C. 1973j 18
§ 12(f), 42 U.S.C. 1973j(f) 18
28 U.S.C. 2284(a) 18
28 C.F.R. 51.55(b)(2) 15

Miscellaneous: Page

S. Rep. No. 417, 97th Cong., 2d Sess. (1982) 15, 16

In the Supreme Court of the United States

OCTOBER TERM, 1995

No. 95-1455

JANET RENO, ATTORNEY GENERAL OF THE UNITED STATES, APPELLANT

v.

BOSSIER PARISH SCHOOL BOARD

No. 95-1508

GEORGE PRICE, ET AL., APPELLANTS

v.

BOSSIER PARISH SCHOOL BOARD

ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF COLUMBIA

REPLY BRIEF FOR THE FEDERAL APPELLANT

---

1. As we explained in our opening brief, the district court improperly refused to consider both the racially dilutive impact of the redistricting plan that the Bossier Parish School Board (Board) adopted and the Board's history of discrimination—two important types of circumstantial evidence bearing on the Board's purpose. See *Rogers* v. *Lodge*, 458 U.S. 613, 618, 623-626 (1982). With respect to evidence of a historical pattern of discrimination, appellee contends (Bd. Br. 29) that this Court in

Shaw v. *Hunt*, 116 S. Ct. 1894 (1996) (*Shaw II*), and *Miller* v. *Johnson*, 115 S. Ct. 2475 (1995), "viewed as irrelevant" a covered jurisdiction's "well-documented history of racial discrimination." That contention is plainly incorrect. In each of those cases, the Court concluded that the particular record before the three-judge district court did not support an inference of discriminatory purpose. See *Miller*, 115 S. Ct. at 2492; *Shaw II*, 116 S. Ct. at 1904. It did *not* reject the well-established line of precedent holding that evidence of past racial discrimination is directly relevant to a governmental actor's motivation in adopting a challenged policy. See, *e.g.*, *Village of Arlington Heights* v. *Metropolitan Housing Dev. Corp.*, 429 U.S. 252, 267 (1977) (factors relevant to the purpose inquiry include the "historical background of the decision"—"particularly if it reveals a series of official actions taken for invidious purposes"); *Rogers*, 458 U.S. at 624-625 ("Evidence of historical discrimination is relevant to drawing an inference of purposeful discrimination."); *Busbee* v. *Smith*, 549 F. Supp. 494 (D.D.C. 1982), aff'd, 459 U.S. 1166 (1983) (same); *City of Pleasant Grove* v. *United States*, 568 F. Supp. 1455, 1458 (D.D.C. 1983) (same).

With respect to the dilutive effect of the challenged plan, appellee first contends (Bd. Br. 32-33) that "the district court quite clearly, thoroughly and directly considered the adopted redistricting plan's effect on minority voters," and later suggests (*id.* at 33, 35) that the district court simply presumed that the Police Jury plan adopted by the Board had a dilutive impact. Both of those contentions are incorrect. As to the former, appellees cannot point to *any* discussion of the plan's dilutive impact in the majority opinion below. As to the latter, the district court nowhere presumed that appellee's plan had a dilutive effect on minority voters.

Appellee states (Bd. Br. 33, 34, 35, 36) that "it is assumed, due to the racial polarization and prior discrimination that renders the jurisdiction subject to Section 5 preclearance, that such racially-charged electoral conditions exist and white majority districts will thus have a foreseeable impact." The district court, however, expressly declined to consider such "section 2 evidence" (J.S. App. 23a, 24a),[1] and thus eliminated from its analysis an important category of evidence.[2]

---

[1] Contrary to appellee's suggestion, moreover, racially-polarized voting patterns are not among the factors that trigger Section 5 coverage. See 42 U.S.C. 1973b(b).

[2] Appellee places substantial reliance (Bd. Br. 6, 8, 27, 28, 31) on the district court's statement that it did not consider "evidence relevant *only* to the section 2 inquiry." J.S. App. 9a n.6 (emphasis added). The district court, however, clearly refused to address any evidence regarding the dilutive impact of the Board's redistricting plan—a category of evidence that this Court has held to be relevant to the issue of discriminatory purpose, as well as to Section 2. See *Rogers* v. *Lodge*, *supra*.

Appellee also contends (Bd. Br. 30-31, 32 n.25) that the United States had "drawn a clear distinction between 'section 2 evidence' [such as evidence of racial bloc voting] and evidence 'independently relevant' to Section 5 purposes [such as evidence of historical discrimination]." Bd. Br. 32 n.25. We drew no such distinction. The heading of the relevant section of our post-trial brief made clear our position that "[t]he Section 2 evidence presented in this case is independently relevant to material issues outside the Section 2 inquiry." Gov't Post-Trial Brief at 36. In any event, the district court clearly did not limit its exclusion of "section 2 evidence" to evidence of racial bloc voting, nor would that limited exclusion have been warranted given the relevance of bloc voting to the question of foreseeable discriminatory effects. See, *e.g.*, *City of Port Arthur* v. *United States*, 517 F. Supp. 987, 1022 (D.D.C. 1981) (three-judge court) ("Knowing that City politics were seriously polarized by race, the officials responsible for developing the [challenged electoral] plan must have realized the improbability of the black population electing more than one candidate of its choice."), aff'd, 459 U.S. 159 (1982).

Appellee suggests (Bd. Br. 33) that a court is under no obligation to consider evidence that a redistricting plan has a racially discriminatory impact if the court "cut[s] directly to the dispositive question" of what actually motivated the decisionmaker. In appellee's view, evidence of vote dilution "tells us *why* a black majority district is *needed* to elect black candidates, but it says nothing about *why* a black majority district was *not created*." *Id.* at 34-35. This Court has squarely rejected that proposition.

Government officials rarely provide direct evidence of their discriminatory intentions. Because the Voting Rights Act is "aimed at the subtle[] as well as the obvious" discriminatory voting practices, *Allen* v. *State Bd. of Elections*, 393 U.S. 544, 565 (1969), courts must conduct "a sensitive inquiry into such circumstantial and direct evidence of intent as may be available." *Arlington Heights*, 429 U.S. at 266. This Court has repeatedly held that evidence of an action's discriminatory impact is an important category of circumstantial evidence bearing on intent. See, *e.g.*, *Rogers*, 458 U.S. at 623-624; *Washington* v. *Davis*, 426 U.S. 229, 242 (1976); *City of Mobile* v. *Bolden*, 446 U.S. 55, 70 (1980); *Pullman-Standard* v. *Swint*, 456 U.S. 273, 289 & n.18 (1982); *Columbus Bd. of Educ.* v. *Penick*, 443 U.S. 449, 464-465 (1979).

"Frequently the most probative evidence of intent will be objective evidence of what actually happened rather than evidence describing the subjective state of mind of the actor. For normally the actor is presumed to have intended the natural consequences of his deeds." *Washington* v. *Davis*, 426 U.S. at 253 (Stevens, J., concurring). Accordingly, a governmental action with foreseeably harmful effects on a discrete group supports an inference that those effects were intended. See *Personnel Admin.* v. *Feeney*, 442 U.S. 256, 279 n.25 (1979) (where adverse consequences of a law on an identifiable group are inevitable, "a strong inference that the adverse effects were desired can reasonably be drawn").

In adjudicating purposeful dilution cases, the courts have thus looked to whether a districting plan's discriminatory effect was understood by, or foreseeable to, the governmental body that enacted it. See, *e.g.*, *Garza* v. *County of Los Angeles*, 918 F.2d 763, 768 n.1 (9th Cir. 1990), cert. denied, 498 U.S. 1028 (1991); *Rybicki* v. *State Bd. of Elections*, 574 F. Supp. 1082, 1108-1109 (N.D. Ill. 1982) (three-judge court). The mere existence of a history of discrimination and a present discriminatory effect does not ordinarily compel a finding of discriminatory purpose. But see *Arlington Heights*, 429 U.S. at 266 ("Sometimes a clear pattern, unexplainable on grounds other than race, emerges from the effect of the state action."); *International Brotherhood of Teamsters* v. *United States*, 431 U.S. 324, 342 n.23 (1977) (observing, in a Title VII case, that "the company's inability to rebut the inference of discrimination came not from a misuse of statistics, but from the inexorable zero") (internal quotation marks omitted); *Yick Wo* v. *Hopkins*, 118 U.S. 356 (1886). Such evidence, however, is highly relevant to the intent inquiry. Here, the district court erred in refusing to consider how the Board's awareness of the dilutive impact of the Police Jury plan bore on the question of intent.

Contrary to appellee's contention (Bd. Br. 28-30), this Court's decisions in *Shaw II* and *Miller* are consistent with that principle. In those cases, the Court deemed "insupportable" the Attorney General's decision to interpose Section 5 objections to particular congressional redistricting plans. *Shaw II*, 116 S. Ct. at 1904; *Miller*, 115 S. Ct. at 2492. In neither case did the Court refuse to consider the effect of the redistricting plan at issue on minority voters. To the contrary, in each case the Court emphasized that the plan initially adopted by the legisla-

ture was ameliorative—that is, that the plan would have improved the opportunity for minority voters to elect their chosen candidates—and that there was no other "evidence of an intent to discriminate against minority voters." *Miller*, 115 S. Ct. at 2483; see *Shaw II*, 116 S. Ct. at 1904; *Miller*, 115 S. Ct. at 2492-2493.[3] The Court thus concluded that the only possible basis for the Attorney General's objections must have been the States' simple failure to draw as many majority-minority districts as possible—a basis the Court found insufficient to warrant a finding of discriminatory purpose. See *Shaw II*, 116 S. Ct. at 1904; *Miller*, 115 S. Ct. at 2492. Here, by contrast, the plan adopted by the Board perpetuated the dilutive impact of the prior plan—under which no black candidate had ever been elected. See J.S. App. 115a-116a (¶¶ 153-157).[4] Selection of the Police Jury plan was intended to ensure that the existing dilution of minority voting strength would continue.

Appellee also contends (Bd. Br. 3; emphasis omitted) that "[t]here is no competent evidence of racial bloc voting in any local Bossier Parish elections." That is untrue. A

[3] Indeed, in concluding that North Carolina's rejection of an alternative plan did not reflect a discriminatory purpose, the Court specifically relied on evidence that the State believed the alternative plan to be *less* protective of minority voting strength than the ameliorative plan that it adopted. See *Shaw II*, 116 S. Ct. at 1904 (quoting statement in State's Section 5 submission that the second majority-minority district in the alternative plan "'did not have an effective minority voting majority' because it 'depended on the cohesion of black and Native American voters, and no such pattern was evident' and 'this plan dramatically decreased black influence' in four other districts").

[4] The Board's plan reduced the African-American voting-age population (VAP) in each of the two districts with the largest black VAP concentrations—from 42.1% to 40.9% in District Four and from 36.9% to 36.1% in District Seven. J.A. 44, 47.

regression analysis of the only interracial parish-wide race for local office in recent years (the 1988 primary election for the 26th Judicial District Court) revealed a high degree of racial polarization: the analysis estimated that 79.2% of black voters supported the unsuccessful African-American candidate, while only 28.9% of white voters did so. J.S. App. 122a-123a (¶¶ 183-184); J.A. 113-115. It is appropriate to consider the results in such "exogenous" parish-wide elections where, as here, many districts contain too few precincts to perform a reliable ecological regression analysis for elections that are held in individual districts. See generally J.A. 114-121.[5] The parties stipulated, moreover, that "[o]f the 14 elections since 1980 in which black candidates have run against white candidates for a single-member district or for mayor, only two candidates have won." J.S. App. 127a (¶ 196).[6]

[5] See *Westwego Citizens for Better Gov't* v. *City of Westwego*, 872 F.2d 1201, 1208-1210 (5th Cir. 1989); *Citizens for a Better Gretna* v. *City of Gretna*, 834 F.2d 496, 502 (5th Cir. 1987) (concluding that *Thornburg* v. *Gingles*, 478 U.S. 30 (1986), "suggests flexibility in the face of sparse data"), cert. denied, 492 U.S. 905 (1989).

[6] Those two candidates (Jerome Darby in Police Jury District 10 and Jeff Darby in Bossier City Council District 2) were elected under unique circumstances that do not detract from the broader pattern of racially-polarized voting in Bossier Parish. See *Gingles*, 478 U.S. at 57. Those candidates were elected in districts that included substantial areas surrounding Barksdale Air Force Base—an atypical factor that reduced the racial polarization and increased comparative African-American voter turnout in those districts. J.S. App. 2a n.1, 117a-118a (¶¶ 160-164), 120a (¶ 172), 127a (¶ 196). When that unique factor no longer obtained following the post-1990 census redistricting, Jeff Darby lost his seat to a white challenger. *Id.* at 120a (¶ 173). (Jerome Darby was not opposed for reelection. *Id.* at 118a-119a (¶ 165)). Nor do the results of the 1996 school board elections detract from the conclusion that significant polarization exists. Cf. Bd. Br. 5 & n.4. This Court

The record thus fully supports Judge Kessler's conclusion that the Board's adoption of the Police Jury plan "effectively excludes minority voters from the political process." J.S. App. 41a. By refusing to consider this significant, racially dilutive impact, the district court did not simply "cut directly to the dispositive question" (Bd. Br. 33) of the Board's intent. Rather, it excluded important evidence from its inquiry into that question. In light of appellee's burden of persuasion, see *Georgia* v. *United States*, 411 U.S. 526, 538 (1973), and the other strong indicia of discriminatory purpose in this case, that determination may well have made the difference in the district court's decision. The judgment therefore cannot stand. See *Pullman-Standard* v. *Swint*, 456 U.S. 273, 292 (1982).

2. Appellee stresses purported inadequacies of the NAACP plan proposed to the Board by appellant-intervenor Price (Bd. Br. 2, 40-41, 47-48), and contends that "[t]he Board was offered a choice between two alternative redistricting plans." *Id.* at 40. The proper inquiry in this case, however, is whether the electoral plan that the Board *did* adopt—the Police Jury plan—was selected because of its foreseeable adverse effects on African-American voters. The merit of the NAACP plan is not presented in this case, nor was that plan the only other alternative available to the Board when it made the decision at issue here.

---

denied appellee's motion to supplement the record to include these election results. 116 S. Ct. 1540 (1996). Without being tested and placed in context, they can have little or no probative significance. They have not, for example, been subjected to the kind of expert analysis of racial polarization and turnout that the parties conducted regarding previous elections, see J.S. App. 122a-127a, and there has been no exploration of special circumstances that might bear on their probative value—including, for example, whether the pending litigation itself had any impact on the elections. See *Gingles*, 478 U.S. at 75-76 & n.37.

The Board had initially refused to adopt the Police Jury's 1991 plan, even though that plan had received Section 5 preclearance. Instead, it proceeded without haste to develop its own independent plan. That action was understandable; it is undisputed that the Police Jury and the School Board generally have different redistricting interests, and that ample time remained for the Board to draw its own plan before its first post-census election in 1994. J.S. App. 4a; *id.* at 72a (¶ 24). But as soon as the local NAACP presented its proposal, the Board abruptly changed course. *Id.* at 96a-101a. At the very next Board meeting after the NAACP presented its proposal (two years before the next election), the Board passed a motion of intent to adopt the Police Jury plan, which contains no majority-black districts. That plan made no attempt to accommodate School Board members' "typical[] concern[] with having a public school or schools in each district." *Id.* at 73a (¶ 24), 112a (¶ 141).[7] It also "wreaked havoc with the incumbencies of four of the School Board members." *Id.* at 28a. The Board's precipitate decision to adopt a plan that disserved its usual redistricting goals supports a strong inference of discriminatory purpose. See *Arlington Heights*, 429 U.S. at 267 & n.17.

Appellee is thus incorrect in stating (Bd. Br. 40) that "[t]he Board was offered a choice between two alternative redistricting plans." Given the significant length of time before the next election, one would expect the Board to have continued the process on which it had initially embarked and explored other alternatives to the Police Jury plan. See *Arlington Heights*, 429 U.S. at 267 ("De-

---

[7] Appellee derides this concern as "appellants[']] newly-discovered 'a school building in every district' rule." Bd. Br. 49 n.34. But it was the School Board itself that stipulated to the consideration's importance. See J.S. App. 73a (¶ 24).

partures from the normal procedural sequence also might afford evidence that improper purposes are playing a role."). Those alternatives might have involved different configurations for drawing two majority-black districts in Bossier Parish. They also might have included plans drawing a single majority-black district; the parties have stipulated that it was "obvious" that a reasonably compact black-majority district could be drawn within Bossier City. J.S. App. 76a (¶ 36).[8] The Board was not required to adopt the NAACP plan or any particular alternative; nor does the mere "failure to maximize" majority-minority districts (Bd. Br. 42) establish a discriminatory purpose. Under the facts of this case, however, the Board's decision immediately to enact the Police Jury plan when presented with the NAACP proposal, and its sudden abandonment of its legitimate search for alternative plans, strongly suggest that the Board adopted the Police Jury plan for an impermissible reason. See *Arlington Heights*, 429 U.S. at 267.

The context of the Board's decision also makes clear the pretextual nature of the Board's assertion that its action was required by a state law against splitting precincts. As we explained in our opening brief (Br. 9 n.6), precincts are purely administrative units designed for the management of elections. The district court found that from the start of the redistricting process the Board "likely anticipated the necessity of splitting some precincts." J.S. App.

[8] Appellee urges the Court to disregard this stipulation (Bd. Br. 48 n.33), arguing that it is inconsistent with the record developed at trial. Trial in this case was limited, at the district court's suggestion, to two days only, and the live testimony consisted solely of cross-examination—the parties were restricted to submitting direct testimony in written, narrative form. Given these constraints on proof, the United States should not be penalized for failing to present additional evidence of facts to which appellee had already stipulated.

29a. The Board's own redistricting consultant provided the Board members with precinct maps and instructed them that they "would have to work with the Police Jury to alter the precinct lines." *Id.* at 95a (¶ 89). Had the Board done so, its plan would have constituted neither a "violation[]" nor an "eva[sion]" (Bd. Br. 44) of state law, for it is undisputed that the Police Jury had the power to redraw precincts. J.S. App. 6a-7a, 72a. Although the Police Jury had rejected the Board's initial overture for joint *redistricting* (Bd. Br. 45)—an action readily explainable by the two bodies' divergent districting interests—appellee has presented no evidence that the Board would have refused to cooperate in altering *precinct* lines to accommodate whatever districts the Board drew.[9] Nor has appellee explained why the Board did not even approach the Police Jury to determine whether it would cooperate. The dictates of state law simply do not explain the Board's abrupt decision to adopt the Police Jury plan.

Nor can the Board's use of the Police Jury plan be explained by concerns regarding the cost of additional precincts. Contrary to appellee's contention (Bd. Br. 44-45), adopting a plan with two majority-black districts would not have required a significant increase in the number of precincts. Even if, as appellee now argues, adoption of such a plan would cut existing precinct lines in 65 places,[10] many areas cut out of those precincts could be

[9] Appellee suggests (Bd. Br. 45) that the Police Jury had no incentive to cooperate *after* the Attorney General's objection to the Board's plan, because doing so would have constituted an admission of the Police Jury's own liability. But the Police Jury's cooperation with the Board *at the time the Board redistricted* would have carried no such inference of admission.

[10] For this figure, appellee relies on Plaintiff's Exhibit 11, a table that was not the subject of testimony or other explanation below. On its face, however, the exhibit does not suggest that 65 new precincts

consolidated with each other or with existing precincts — an option that is permissible under Louisiana law. Def.-Int. Exh. G at 14. Throughout the redistricting process, the Police Jury anticipated consolidating precincts "as soon as practicable." J.S. App. 86a (¶ 61). Had the Board explored the possibility of precinct consolidation, it could have drawn a plan containing two majority-black districts with as few as 46 total precincts—3 precincts more than the 1990 total, and 10 precincts *fewer* than the Police Jury used in its 1991 redistricting plan. Def.-Int. Exh. G at 14-15. Such consolidations would have addressed any significant concern with increased costs.[11] The Board's failure even to examine the prospect of consolidation, and the Police Jury's own adoption of a redistricting plan that required the creation of 13 additional precincts, cast considerable doubt on appellee's asserted concern with electoral costs.

For similar reasons, appellee's suggestion (Bd. Br. 47-48) that the NAACP plan split three towns does not

would need to be created under the NAACP plan. The exhibit identifies 65 precinct "cuts," but 13 of those "cuts" contain no population, and many others contain very small population totals. The "cuts" therefore could readily have been remedied by consolidation with other precincts.

[11] Appellee does not mention the availability of *consolidating* precincts—a procedure that reduces the number of precincts by joining them together for all purposes and thus saves the election costs that additional precincts would entail. See J.A. 171. Appellee instead refers to the possibility of allowing *separate* precincts to share polling places (Bd. Br. 45 n.31)—a distinct process that may reduce some election costs but does not reduce the number of precincts. Compare J.S. App. 85a-86a (¶ 61) (noting that the Board's redistricting consultant, Gary Joiner, was aware that changes could be made "to consolidate some precincts and thus reduce administrative costs"); with *id.* at 86a (¶ 62) (noting that "it was also Joiner's understanding" that "costs could be reduced by placing the machines and poll workers of two precincts at one polling place").

explain the Board's abrupt decision, when faced with that plan, to abandon its search for alternatives and adopt the Police Jury plan. One of the three towns—Haughton—was wholly unaffected by either majority-black district in the NAACP plan. See Def.-Int. Exh. 7, Map 3. The Board could thus have readily drawn two majority-black districts without splitting that town had it attempted to do so.[12] Moreover, the Police Jury plan, which the Board rushed to adopt, split the town of Benton (J.A. 102-103) and divided well-established, predominantly black neighborhoods within Bossier City. J.A. 102-104. Appellee's articulated rationale of avoiding the splitting of municipalities is pretextual.

In sum, the strongest evidence demonstrating the Board's purpose is not the Board's failure to adopt the NAACP plan but rather its decision to adopt the Police Jury plan—a plan it had already rejected as inconsistent with its districting interests—in circumstances suggesting a discriminatory motivation. As Judge Kessler found below,

> [t]he common-sense understanding of these events leads to one conclusion: The Board adopted the Police Jury plan—two years before the next election—in direct response to the presentation of a plan that created majority-black districts. Faced with growing frustration of the black community at being excluded from the electoral process, the only way for the School Board to ensure that no majority-black districts would be created was to quickly adopt the Police Jury plan and put the issue to rest.

[12] The "Cooper 2" plan submitted by Defendant-Intervenors below included Haughton entirely within District 12. See Def.-Int. Exh. 25B.

J.S. App. 49a-50a. The district court's holding that appellee met its burden of proof,[13] notwithstanding this compelling evidence, was clear error.

3. We explained in our opening brief (Gov't Br. 33-44) that, when Section 2 was amended in 1982, Congress read this Court's decision in *Beer* v. *United States*, 425 U.S. 130 (1976), as requiring that electoral changes resulting in unlawful vote dilution not be precleared. In *Beer*, 425 U.S. at 141, the Court concluded that a nonretrogressive redistricting plan could not violate the "effect" prong of Section 5 "unless the new apportionment itself so discriminates on the basis of race or color as to violate the Constitution." In noting the possibility that "a legislative reapportionment could be a substantial improvement over its predecessor in terms of lessening racial discrimination, and yet nonetheless continue so to discriminate on the basis of race or color as to be unconstitutional," the Court cited, *inter alia*, the vote dilution cases culminating in *White* v. *Regester*, 412 U.S. 755 (1973). See *Beer*, 425 U.S. at 142-143 n.14. In the 1982 amendments, Congress reinstated what it understood to be *White*'s "results" test as the standard governing Section 2 claims. See *Gingles*, 478 U.S. at 43-44 & n.8.

Congress reasonably read the Court's decision in *Beer* to require the conclusion that changed voting systems violative of amended Section 2's "results" standard could not be precleared under Section 5—whether because a discriminatory "result" constituted a form of discriminatory "effect" under Section 5, or because the equitable

[13] A covered jurisdiction in a Section 5 declaratory judgment action has the burden of proving, *inter alia*, that its voting changes were not adopted for a discriminatory purpose. *Georgia* v. *United States*, 411 U.S. 526, 538 (1973). As a consequence, even if the evidence were in equipoise with respect to the question of discriminatory purpose, the district court would have been obligated to deny Section 5 preclearance.

remedy of preclearance could not be invoked in aid of a proven violation of anti-discrimination law. See Gov't Br. 34-35. The Senate Report made Congress's understanding on this point explicit by quoting *Beer*'s discussion and concluding that "[i]n light of the amendment to Section 2, it is intended that a Section 5 objection also follow if a new voting procedure itself so discriminates as to violate Section 2." S. Rep. No. 417, 97th Cong., 2d Sess. 12 n.31 (1982). The Attorney General's Procedures for the Administration of Section 5 incorporate Congress's understanding by requiring a denial of preclearance where "a bar to implementation of the change is necessary to prevent a clear violation of amended section 2." 28 C.F.R. 51.55(b)(2).[14]

The Senate Report makes clear that Congress viewed *Beer* as *already* incorporating a prohibition of unlawful vote dilution into Section 5. It is therefore simply irrelevant that, as appellee repeatedly observes (Bd. Br. 13, 14, 15, 22 & n.17), Congress did not alter the language of Section 5 itself in 1982 to provide expressly that a Section 2 "results" violation requires a denial of preclearance. Congress need not alter the language of a statutory provision when, as here, it agrees with a prior judicial

[14] Appellee contends (Bd. Br. 22-23 n.18) that this regulation is not entitled to deference. This Court, however, has accorded "particular deference" to the interpretations of the Voting Rights Act set forth in the Procedures for the Administration of Section 5. *Dougherty County Bd. of Educ.* v. *White*, 439 U.S. 32, 39 (1978); see *Georgia* v. *United States*, 411 U.S. 526, 536-539 (1973); see also *Morse* v. *Republican Party of Virginia*, 116 S. Ct. 1186, 1193-1197 (1996) (plurality opinion) (applying Attorney General's regulation relating to Section 5 coverage of political parties). Nor is the regulation—which interprets Section 5's prohibition on voting changes "hav[ing] the effect of denying or abridging the right to vote on account of race," 42 U.S.C. 1973c, to encompass changes that "result" in discriminatory vote dilution—unreasonable or contrary to the plain text of the statute. See generally *Chevron U.S.A. Inc.* v. *National Resources Defense Council, Inc.*, 467 U.S. 837 (1984).

gloss on that provision. To the contrary, "[w]hen a Congress that re-enacts a statute voices its approval of an administrative or other interpretation thereof, Congress is treated as having adopted that interpretation, and this Court is bound thereby." *United States* v. *Board of Comm'rs*, 435 U.S. 110, 134 (1978).[15]

Appellee incorrectly contends (Bd. Br. 20) that the *Beer* language quoted in the Senate Report "simply makes the obvious point that intentionally discriminatory action is prohibited by Section 5."[16] The *Beer* Court's discussion of a change that "itself so discriminates * * * as to violate the Constitution," *Beer*, 425 U.S. at 141, and its discussion of the ways in which a change might violate that standard, *id.* at 142-143 n.14, would have been a highly circuitous way of making the obvious point that Section 5's text prohibits changes with the "purpose" of denying or abridging the right to vote.[17] Moreover, by noting that an

---

[15] By contrast, the 1982 amendments did alter the text of the "bailout" provisions in Section 4(b) of the Act, 42 U.S.C. 1973b(b), to provide expressly that a covered jurisdiction could not exempt itself from Section 5's preclearance requirement unless it had eliminated "all voting procedures and methods of election which inhibit or dilute equal access to the electoral process." 42 U.S.C. 1973b(F)(i). This amendment was necessary because—unlike in the case of Section 5—prior interpretation of Section 4 did not allow bailout to be denied on the basis of unlawful vote dilution. S. Rep. No. 417, 97th Cong., 2d Sess. 43-45 (1982).

[16] Appellee also notes (Br. 20) that Justice Marshall, dissenting in *Beer*, vigorously argued that the *White* v. *Regester* standard should apply. But Justice Marshall—like Congress—read the majority opinion in *Beer* as ultimately holding that preclearance should be withheld where a change violates *White*'s "results" test. See *Beer*, 425 U.S. at 153-155.

[17] The question of discriminatory purpose was not at issue in *Beer* because the three-judge court had denied preclearance based solely on Section 5's "effect" prong. See *Beer*, 425 U.S. at 136 n.7.

ameliorative plan could "*continue so to discriminate* on the basis of race or color as to be unconstitutional," *id.* at 142 n.14 (emphasis added), the Court focused on the continuing *operation* of the redistricting plan, rather than on the discrete *intent* underlying its enactment. In light of that language, Congress reasonably concluded that *Beer* required that preclearance be denied where a change violated *White*'s "results" test. The Senate Report—the "authoritative source" for determining Congress's intent in enacting the 1982 amendments, *Gingles*, 478 U.S. at 43 n.7—makes clear that Congress read *Beer* in this way.

Nor would the result be different if Congress erred in interpreting the *Beer* decision; where Congress acts to codify its understanding of prevailing case law, that understanding is controlling for purposes of subsequent statutory construction. "Whether that understanding of Congress was in some ultimate sense incorrect is not what is important * * *. For the relevant inquiry is not whether Congress correctly perceived the then state of the law, but rather what its perception of the state of the law was." *Brown* v. *General Services Administration*, 425 U.S. 820, 828 (1976).

Appellee invokes the "rule of statutory construction that if Congress intends to alter the usual constitutional balance between States and the Federal Government, it must make its intention to do so unmistakably clear in the language of the statute." Bd. Br. 24 (quoting *Will* v. *Michigan Dep't of State Police*, 491 U.S. 58, 65 (1989) (internal quotation marks omitted)). The language of the Voting Rights Act, however, does make "unmistakably clear" that it alters the "usual constitutional balance" by subjecting covered jurisdictions like Bossier Parish to the requirements of Section 5, and by requiring all States and political subdivisions to comply with Section 2. Because Bossier Parish is clearly subject to the restrictions of

both Section 2 and Section 5, the denial of preclearance to one of its voting changes that violates Section 2 does not work any further alteration of the constitutional balance. Indeed, given the substantial overlap in the factors relevant to discriminatory purpose and the factors relevant to a Section 2 violation, much if not all of the evidence necessary to a Section 2 inquiry will necessarily be before the Section-5 court in any event. Compare *Gingles*, 478 U.S. at 43-51 (factors relevant to establishing Section 2 violation), with *Rogers*, 458 U.S. at 622-627 (factors relevant to establishing purposeful vote dilution). It would thus be quite anomalous if Congress intended to require preclearance even when a Section 2 violation is fully established in the Section 5 proceedings. See *Morse* v. *Republican Party of Virginia*, 116 S. Ct. 1186, 1201 (1996) (plurality opinion).[18]

[18] Appellee suggests (Bd. Br. 14, 19) that a three-judge district court lacks subject matter jurisdiction to consider Section 2 issues. Even if appellee were correct that a Section 2 claim may not form the basis for jurisdiction in the three-judge court, nothing in the statute prevents the court from considering the Section 2 results standard in the course of adjudicating a Section 5 action over which it concededly has jurisdiction. Moreover, appellee is incorrect. Jurisdiction to enforce Section 2 is provided by Section 12(f) of the Voting Rights Act, 42 U.S.C. 1973j(f), which vests subject matter jurisdiction in the "district courts of the United States," without limitation. Indeed, Section 2 challenges to statewide reapportionments *must* be brought in three-judge district courts. See 28 U.S.C. 2284(a). And this Court has affirmed the assertion of jurisdiction by the three-judge District Court for the District of Columbia to issue injunctions against the implementation of unprecleared voting changes—even though the same provision of Section 12 provides jurisdiction for such Section 5 enforcement actions, and even though *Allen* v. *State Bd. of Elections*, 393 U.S. 544, 560 (1969), held that such actions may be brought in the district in which the change is implemented. See *Texas* v. *United States*, No. 94-1529 (D.D.C. Sept. 27, 1994) (three-judge court), summarily aff'd, 115 S. Ct. 1397 (1995).

Finally, there is no merit to appellee's contention (Bd. Br. 10-13) that this Court's decisions in *Shaw II* and *Miller* held that a violation of Section 2 does not warrant the denial of preclearance. In each of those cases, the Attorney General's Section 5 objection was based solely on a claim of discriminatory purpose. See *Shaw II*, 116 S. Ct. at 1904; *Miller*, 115 S. Ct. at 2492. While the Court expressed "doubt that a showing of discriminatory effect under § 2, alone, could support a claim of discriminatory *purpose* under § 5," *Shaw II*, 116 S. Ct. at 1905 n.6 (emphasis added), the Court has never addressed the question whether a violation of amended Section 2 provides a ground for denying preclearance under the "effect" prong of Section 5, or as a bar to a Section 5 equitable remedy. See *City of Lockhart* v. *United States*, 460 U.S. 125, 133 n.9 (1983) (declining to address that question). Nor would denying preclearance on the basis of a Section 2 violation codify the "maximization policy" that this Court condemned in *Shaw II* and *Miller*. Cf. Bd. Br. 12. Section 2, by definition, does not require maximization. See *Johnson* v. *DeGrandy*, 114 S. Ct. 2647, 2660 (1994) ("Failure to maximize cannot be the measure of § 2."). Preclearance may not be denied under Section 2's "results" test unless the detailed preconditions for such a violation are established and, in the totality of the circumstances, it is shown that minority voters in the jurisdiction lack an equal opportunity to participate in the political process and to elect representatives of their choice. See 114 S. Ct. at 2654-2663.

* * * * *

For the foregoing reasons and those stated in our opening brief, the judgment of the district court should be reversed and the case remanded for entry of a declaratory judgment that the redistricting plan at issue here is not

entitled to preclearance under Section 5. In the alternative, the judgment should be reversed and the case remanded for further proceedings to consider, under proper legal standards, the evidence concerning discriminatory purpose and the plan's compliance with Section 2.

Respectfully submitted.

WALTER DELLINGER
Acting Solicitor General

OCTOBER 1996

Supreme Court, U.S.
FILED
OCT 21 1996
CLERK

(11) (10)

Nos. 95-1455 and 95-1508

In the Supreme Court of the United States

OCTOBER TERM, 1996

JANET RENO, ATTORNEY GENERAL OF THE UNITED STATES, APPELLANT

v.

BOSSIER PARISH SCHOOL BOARD

GEORGE PRICE, ET AL., APPELLANTS

v.

BOSSIER PARISH SCHOOL BOARD

ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF COLUMBIA

REPLY BRIEF FOR THE FEDERAL APPELLANT

WALTER DELLINGER
Acting Solicitor General
Department of Justice
Washington, D.C. 20530-0001
(202) 514-2217

24 pp

TABLE OF AUTHORITIES

Cases:	Page
Allen v. *State Bd. of Elections*, 393 U.S. 544 (1969)	4, 19
Beer v. *United States*, 425 U.S. 130 (1976)	14, 16, 17
Brown v. *General Services Administration*, 425 U.S. 820 (1976)	17
Busbee v. *Smith*, 549 F. Supp. 494 (D.D.C. 1982), aff'd, 459 U.S. 1166 (1983)	2
Chevron U.S.A. Inc. v. *Natural Resources Defense Council, Inc.*, 467 U.S. 837 (1984)	15
Citizens for a Better Gretna v. *City of Gretna*, 834 F.2d 496 (5th Cir. 1987), cert. denied, 492 U.S. 905 (1989)	7
City of Lockhart v. *United States*, 460 U.S. 125 (1983)	19
City of Mobile v. *Bolden*, 446 U.S. 55 (1980)	4
City of Pleasant Grove v. *United States*, 568 F. Supp. 1455 (D.D.C. 1983)	2
City of Port Arthur v. *United States*, 517 F. Supp. 987 (D.D.C. 1981), aff'd, 459 U.S. 159 (1982)	3
Columbus Bd. of Educ. v. *Penick*, 443 U.S. 449 (1979)	4
Dougherty County Bd. of Educ. v. *White*, 439 U.S. 32 (1978)	15
Garza v. *County of Los Angeles*, 918 F.2d 763 (9th Cir. 1990), cert. denied, 498 U.S. 1028 (1991)	5
Georgia v. *United States*, 411 U.S. 526 (1973)	8, 13-14, 15
International Brotherhood of Teamsters v. *United States*, 431 U.S. 324 (1977)	5
Johnson v. *DeGrandy*, 114 S. Ct. 2647 (1994)	19
Miller v. *Johnson*, 115 S. Ct. 2475 (1995)	2, 5, 6, 19

Cases—Continued: Page

Morse v. *Republican Party of Virginia*, 116 S. Ct. 1186 (1996) 15, 18
Personnel Admin. v. *Feeney*, 442 U.S. 256 (1979) 4
Pullman-Standard v. *Swint*, 456 U.S. 273 (1982) ... 4, 8
Rogers v. *Lodge*, 458 U.S. 613 (1982) 1, 2, 3, 4, 18
Rybicki v. *State Bd. of Elections*, 574 F. Supp. 1082 (N.D. Ill. 1982) 5
Shaw v. *Hunt*, 116 S. Ct. 1894 (1996) 2, 5, 6, 19
Texas v. *United States*, No. 94-1529 (D.D.C. Sept. 27, 1994), summarily aff'd, 115 S. Ct. 1397 (1995) 19
Thornburg v. *Gingles*, 478 U.S. 30 (1986) .. 7, 8, 14, 17, 18
United States v. *Board of Comm'rs*, 435 U.S. 110 (1978) 16
Village of Arlington Heights v. *Metropolitan Housing Dev. Corp.*, 429 U.S. 252 (1977) 2, 4, 5, 9, 10
Washington v. *Davis*, 426 U.S. 229 (1976) 4
Westwego Citizens for Better Gov't v. *City of Westwego*, 872 F.2d 1201 (5th Cir. 1989) 7
White v. *Regester*, 412 U.S. 755 (1973) 14, 16
Will v. *Michigan Dep't of State Police*, 491 U.S. 58 (1989) 17
Yick Wo v. *Hopkins*, 118 U.S. 356 (1886) 5

Statutes and regulation:

Voting Rights Act of 1975, 42 U.S.C. 1973 *et seq.*:
§ 2, 42 U.S.C. 1973 ..... 3, 14, 15, 18, 19, 20
§ 4, 42 U.S.C. 1973b 16
§ 4(b), 42 U.S.C. 1973b(b) 3, 16
§ 4(F)(i), 42 U.S.C. 1973b(F)(i) 16
§ 5, 42 U.S.C. 1973c ..... *passim*
§ 12, 42 U.S.C. 1973j 19
§ 12(f), 42 U.S.C. 1973j(f) 18
28 U.S.C. 2284(a) 18
28 C.F.R. 51.55(b)(2) 15

Miscellaneous: Page

S. Rep. No. 417, 97th Cong., 2d Sess. (1982) 15, 16

In the Supreme Court of the United States

OCTOBER TERM, 1996

No. 95-1455

JANET RENO, ATTORNEY GENERAL OF THE UNITED STATES, APPELLANT

v.

BOSSIER PARISH SCHOOL BOARD

No. 95-1508

GEORGE PRICE, ET AL., APPELLANTS

v.

BOSSIER PARISH SCHOOL BOARD

ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF COLUMBIA

REPLY BRIEF FOR THE FEDERAL APPELLANT

---

1. As we explained in our opening brief, the district court improperly refused to consider both the racially dilutive impact of the redistricting plan that the Bossier Parish School Board (Board) adopted and the Board's history of discrimination—two important types of circumstantial evidence bearing on the Board's purpose. See *Rogers* v. *Lodge*, 458 U.S. 613, 618, 623-626 (1982). With respect to evidence of a historical pattern of discrimination, appellee contends (Bd. Br. 29) that this Court in

Shaw v. *Hunt*, 116 S. Ct. 1894 (1996) (*Shaw II*), and *Miller* v. *Johnson*, 115 S. Ct. 2475 (1995), "viewed as irrelevant" a covered jurisdiction's "well-documented history of racial discrimination." That contention is plainly incorrect. In each of those cases, the Court concluded that the particular record before the three-judge district court did not support an inference of discriminatory purpose. See *Miller*, 115 S. Ct. at 2492; *Shaw II*, 116 S. Ct. at 1904. It did *not* reject the well-established line of precedent holding that evidence of past racial discrimination is directly relevant to a governmental actor's motivation in adopting a challenged policy. See, *e.g.*, *Village of Arlington Heights* v. *Metropolitan Housing Dev. Corp.*, 429 U.S. 252, 267 (1977) (factors relevant to the purpose inquiry include the "historical background of the decision"—"particularly if it reveals a series of official actions taken for invidious purposes"); *Rogers*, 458 U.S. at 624-625 ("Evidence of historical discrimination is relevant to drawing an inference of purposeful discrimination."); *Busbee* v. *Smith*, 549 F. Supp. 494 (D.D.C. 1982), aff'd, 459 U.S. 1166 (1983) (same); *City of Pleasant Grove* v. *United States*, 568 F. Supp. 1455, 1458 (D.D.C. 1983) (same).

With respect to the dilutive effect of the challenged plan, appellee first contends (Bd. Br. 32-33) that "the district court quite clearly, thoroughly and directly considered the adopted redistricting plan's effect on minority voters," and later suggests (*id.* at 33, 35) that the district court simply presumed that the Police Jury plan adopted by the Board had a dilutive impact. Both of those contentions are incorrect. As to the former, appellees cannot point to *any* discussion of the plan's dilutive impact in the majority opinion below. As to the latter, the district court nowhere presumed that appellee's plan had a dilutive effect on minority voters.

Appellee states (Bd. Br. 33, 34, 35, 36) that "it is assumed, due to the racial polarization and prior discrimination that renders the jurisdiction subject to Section 5 preclearance, that such racially-charged electoral conditions exist and white majority districts will thus have a foreseeable impact." The district court, however, expressly declined to consider such "section 2 evidence" (J.S. App. 23a, 24a), [1] and thus eliminated from its analysis an important category of evidence.[2]

---

[1] Contrary to appellee's suggestion, moreover, racially-polarized voting patterns are not among the factors that trigger Section 5 coverage. See 42 U.S.C. 1973b(b).

[2] Appellee places substantial reliance (Bd. Br. 6, 8, 27, 28, 31) on the district court's statement that it did not consider "evidence relevant *only* to the section 2 inquiry." J.S. App. 9a n.6 (emphasis added). The district court, however, clearly refused to address any evidence regarding the dilutive impact of the Board's redistricting plan—a category of evidence that this Court has held to be relevant to the issue of discriminatory purpose, as well as to Section 2. See *Rogers* v. *Lodge*, *supra*.

Appellee also contends (Bd. Br. 30-31, 32 n.25) that the United States had "drawn a clear distinction between 'section 2 evidence' [such as evidence of racial bloc voting] and evidence 'independently relevant' to Section 5 purposes [such as evidence of historical discrimination]." Bd. Br. 32 n.25. We drew no such distinction. The heading of the relevant section of our post-trial brief made clear our position that "[t]he Section 2 evidence presented in this case is independently relevant to material issues outside the Section 2 inquiry." Gov't Post-Trial Brief at 36. In any event, the district court clearly did not limit its exclusion of "section 2 evidence" to evidence of racial bloc voting, nor would that limited exclusion have been warranted given the relevance of bloc voting to the question of foreseeable discriminatory effects. See, *e.g.*, *City of Port Arthur* v. *United States*, 517 F. Supp. 987, 1022 (D.D.C. 1981) (three-judge court) ("Knowing that City politics were seriously polarized by race, the officials responsible for developing the [challenged electoral] plan must have realized the improbability of the black population electing more than one candidate of its choice."), aff'd, 459 U.S. 159 (1982).

Appellee suggests (Bd. Br. 33) that a court is under no obligation to consider evidence that a redistricting plan has a racially discriminatory impact if the court "cut[s] directly to the dispositive question" of what actually motivated the decisionmaker. In appellee's view, evidence of vote dilution "tells us *why* a black majority district is *needed* to elect black candidates, but it says nothing about *why* a black majority district was *not created*." *Id.* at 34-35. This Court has squarely rejected that proposition.

Government officials rarely provide direct evidence of their discriminatory intentions. Because the Voting Rights Act is "aimed at the subtle[] as well as the obvious" discriminatory voting practices, *Allen* v. *State Bd. of Elections*, 393 U.S. 544, 565 (1969), courts must conduct "a sensitive inquiry into such circumstantial and direct evidence of intent as may be available." *Arlington Heights*, 429 U.S. at 266. This Court has repeatedly held that evidence of an action's discriminatory impact is an important category of circumstantial evidence bearing on intent. See, *e.g.*, *Rogers*, 458 U.S. at 623-624; *Washington* v. *Davis*, 426 U.S. 229, 242 (1976); *City of Mobile* v. *Bolden*, 446 U.S. 55, 70 (1980); *Pullman-Standard* v. *Swint*, 456 U.S. 273, 289 & n.18 (1982); *Columbus Bd. of Educ.* v. *Penick*, 443 U.S. 449, 464-465 (1979).

"Frequently the most probative evidence of intent will be objective evidence of what actually happened rather than evidence describing the subjective state of mind of the actor. For normally the actor is presumed to have intended the natural consequences of his deeds." *Washington* v. *Davis*, 426 U.S. at 253 (Stevens, J., concurring). Accordingly, a governmental action with foreseeably harmful effects on a discrete group supports an inference that those effects were intended. See *Personnel Admin.* v. *Feeney*, 442 U.S. 256, 279 n.25 (1979) (where adverse consequences of a law on an identifiable group are inevitable, "a strong inference that the adverse effects were desired can reasonably be drawn").

In adjudicating purposeful dilution cases, the courts have thus looked to whether a districting plan's discriminatory effect was understood by, or foreseeable to, the governmental body that enacted it. See, *e.g.*, *Garza* v. *County of Los Angeles*, 918 F.2d 763, 768 n.1 (9th Cir. 1990), cert. denied, 498 U.S. 1028 (1991); *Rybicki* v. *State Bd. of Elections*, 574 F. Supp. 1082, 1108-1109 (N.D. Ill. 1982) (three-judge court). The mere existence of a history of discrimination and a present discriminatory effect does not ordinarily compel a finding of discriminatory purpose. But see *Arlington Heights*, 429 U.S. at 266 ("Sometimes a clear pattern, unexplainable on grounds other than race, emerges from the effect of the state action."); *International Brotherhood of Teamsters* v. *United States*, 431 U.S. 324, 342 n.23 (1977) (observing, in a Title VII case, that "the company's inability to rebut the inference of discrimination came not from a misuse of statistics, but from the inexorable zero") (internal quotation marks omitted); *Yick Wo* v. *Hopkins*, 118 U.S. 356 (1886). Such evidence, however, is highly relevant to the intent inquiry. Here, the district court erred in refusing to consider how the Board's awareness of the dilutive impact of the Police Jury plan bore on the question of intent.

Contrary to appellee's contention (Bd. Br. 28-30), this Court's decisions in *Shaw II* and *Miller* are consistent with that principle. In those cases, the Court deemed "insupportable" the Attorney General's decision to interpose Section 5 objections to particular congressional redistricting plans. *Shaw II*, 116 S. Ct. at 1904; *Miller*, 115 S. Ct. at 2492. In neither case did the Court refuse to consider the effect of the redistricting plan at issue on minority voters. To the contrary, in each case the Court emphasized that the plan initially adopted by the legisla-

ture was ameliorative—that is, that the plan would have improved the opportunity for minority voters to elect their chosen candidates—and that there was no other "evidence of an intent to discriminate against minority voters." *Miller*, 115 S. Ct. at 2483; see *Shaw II*, 116 S. Ct. at 1904; *Miller*, 115 S. Ct. at 2492-2493.[3] The Court thus concluded that the only possible basis for the Attorney General's objections must have been the States' simple failure to draw as many majority-minority districts as possible—a basis the Court found insufficient to warrant a finding of discriminatory purpose. See *Shaw II*, 116 S. Ct. at 1904; *Miller*, 115 S. Ct. at 2492. Here, by contrast, the plan adopted by the Board perpetuated the dilutive impact of the prior plan—under which no black candidate had ever been elected. See J.S. App. 115a-116a (¶¶ 153-157).[4] Selection of the Police Jury plan was intended to ensure that the existing dilution of minority voting strength would continue.

Appellee also contends (Bd. Br. 3; emphasis omitted) that "[t]here is no competent evidence of racial bloc voting in any local Bossier Parish elections." That is untrue. A

[3] Indeed, in concluding that North Carolina's rejection of an alternative plan did not reflect a discriminatory purpose, the Court specifically relied on evidence that the State believed the alternative plan to be *less* protective of minority voting strength than the ameliorative plan that it adopted. See *Shaw II*, 116 S. Ct. at 1904 (quoting statement in State's Section 5 submission that the second majority-minority district in the alternative plan "'did not have an effective minority voting majority' because it 'depended on the cohesion of black and Native American voters, and no such pattern was evident' and 'this plan dramatically decreased black influence' in four other districts").

[4] The Board's plan reduced the African-American voting-age population (VAP) in each of the two districts with the largest black VAP concentrations—from 42.1% to 40.9% in District Four and from 36.9% to 36.1% in District Seven. J.A. 44, 47.

regression analysis of the only interracial parish-wide race for local office in recent years (the 1988 primary election for the 26th Judicial District Court) revealed a high degree of racial polarization: the analysis estimated that 79.2% of black voters supported the unsuccessful African-American candidate, while only 28.9% of white voters did so. J.S. App. 122a-123a (¶¶ 183-184); J.A. 113-115. It is appropriate to consider the results in such "exogenous" parish-wide elections where, as here, many districts contain too few precincts to perform a reliable ecological regression analysis for elections that are held in individual districts. See generally J.A. 114-121.[5] The parties stipulated, moreover, that "[o]f the 14 elections since 1980 in which black candidates have run against white candidates for a single-member district or for mayor, only two candidates have won." J.S. App. 127a (¶ 196).[6]

[5] See *Westwego Citizens for Better Gov't* v. *City of Westwego*, 872 F.2d 1201, 1208-1210 (5th Cir. 1989); *Citizens for a Better Gretna* v. *City of Gretna*, 834 F.2d 496, 502 (5th Cir. 1987) (concluding that *Thornburg* v. *Gingles*, 478 U.S. 30 (1986), "suggests flexibility in the face of sparse data"), cert. denied, 492 U.S. 905 (1989).

[6] Those two candidates (Jerome Darby in Police Jury District 10 and Jeff Darby in Bossier City Council District 2) were elected under unique circumstances that do not detract from the broader pattern of racially-polarized voting in Bossier Parish. See *Gingles*, 478 U.S. at 57. Those candidates were elected in districts that included substantial areas surrounding Barksdale Air Force Base—an atypical factor that reduced the racial polarization and increased comparative African-American voter turnout in those districts. J.S. App. 2a n.1, 117a-118a (¶¶ 160-164), 120a (¶ 172), 127a (¶ 196). When that unique factor no longer obtained following the post-1990 census redistricting, Jeff Darby lost his seat to a white challenger. *Id.* at 120a (¶ 173). (Jerome Darby was not opposed for reelection. *Id.* at 118a-119a (¶ 165)). Nor do the results of the 1996 school board elections detract from the conclusion that significant polarization exists. Cf. Bd. Br. 5 & n.4. This Court

The record thus fully supports Judge Kessler's conclusion that the Board's adoption of the Police Jury plan "effectively excludes minority voters from the political process." J.S. App. 41a. By refusing to consider this significant, racially dilutive impact, the district court did not simply "cut directly to the dispositive question" (Bd. Br. 33) of the Board's intent. Rather, it excluded important evidence from its inquiry into that question. In light of appellee's burden of persuasion, see *Georgia* v. *United States*, 411 U.S. 526, 538 (1973), and the other strong indicia of discriminatory purpose in this case, that determination may well have made the difference in the district court's decision. The judgment therefore cannot stand. See *Pullman-Standard* v. *Swint*, 456 U.S. 273, 292 (1982).

2. Appellee stresses purported inadequacies of the NAACP plan proposed to the Board by appellant-intervenor Price (Bd. Br. 2, 40-41, 47-48), and contends that "[t]he Board was offered a choice between two alternative redistricting plans." *Id.* at 40. The proper inquiry in this case, however, is whether the electoral plan that the Board *did* adopt—the Police Jury plan—was selected because of its foreseeable adverse effects on African-American voters. The merit of the NAACP plan is not presented in this case, nor was that plan the only other alternative available to the Board when it made the decision at issue here.

---

denied appellee's motion to supplement the record to include these election results. 116 S. Ct. 1540 (1996). Without being tested and placed in context, they can have little or no probative significance. They have not, for example, been subjected to the kind of expert analysis of racial polarization and turnout that the parties conducted regarding previous elections, see J.S. App. 122a-127a, and there has been no exploration of special circumstances that might bear on their probative value—including, for example, whether the pending litigation itself had any impact on the elections. See *Gingles*, 478 U.S. at 75-76 & n.37.

The Board had initially refused to adopt the Police Jury's 1991 plan, even though that plan had received Section 5 preclearance. Instead, it proceeded without haste to develop its own independent plan. That action was understandable; it is undisputed that the Police Jury and the School Board generally have different redistricting interests, and that ample time remained for the Board to draw its own plan before its first post-census election in 1994. J.S. App. 4a; *id.* at 72a (¶ 24). But as soon as the local NAACP presented its proposal, the Board abruptly changed course. *Id.* at 96a-101a. At the very next Board meeting after the NAACP presented its proposal (two years before the next election), the Board passed a motion of intent to adopt the Police Jury plan, which contains no majority-black districts. That plan made no attempt to accommodate School Board members' "typical[] concern[] with having a public school or schools in each district." *Id.* at 73a (¶ 24), 112a (¶ 141).[7] It also "wreaked havoc with the incumbencies of four of the School Board members." *Id.* at 28a. The Board's precipitate decision to adopt a plan that disserved its usual redistricting goals supports a strong inference of discriminatory purpose. See *Arlington Heights*, 429 U.S. at 267 & n.17.

Appellee is thus incorrect in stating (Bd. Br. 40) that "[t]he Board was offered a choice between two alternative redistricting plans." Given the significant length of time before the next election, one would expect the Board to have continued the process on which it had initially embarked and explored other alternatives to the Police Jury plan. See *Arlington Heights*, 429 U.S. at 267 ("De-

---

[7] Appellee derides this concern as "appellants[']] newly-discovered 'a school building in every district' rule." Bd. Br. 49 n.34. But it was the School Board itself that stipulated to the consideration's importance. See J.S. App. 73a (¶ 24).

partures from the normal procedural sequence also might afford evidence that improper purposes are playing a role."). Those alternatives might have involved different configurations for drawing two majority-black districts in Bossier Parish. They also might have included plans drawing a single majority-black district; the parties have stipulated that it was "obvious" that a reasonably compact black-majority district could be drawn within Bossier City. J.S. App. 76a (¶ 36).[8] The Board was not required to adopt the NAACP plan or any particular alternative; nor does the mere "failure to maximize" majority-minority districts (Bd. Br. 42) establish a discriminatory purpose. Under the facts of this case, however, the Board's decision immediately to enact the Police Jury plan when presented with the NAACP proposal, and its sudden abandonment of its legitimate search for alternative plans, strongly suggest that the Board adopted the Police Jury plan for an impermissible reason. See *Arlington Heights*, 429 U.S. at 267.

The context of the Board's decision also makes clear the pretextual nature of the Board's assertion that its action was required by a state law against splitting precincts. As we explained in our opening brief (Br. 9 n.6), precincts are purely administrative units designed for the management of elections. The district court found that from the start of the redistricting process the Board "likely anticipated the necessity of splitting some precincts." J.S. App.

[8] Appellee urges the Court to disregard this stipulation (Bd. Br. 48 n.33), arguing that it is inconsistent with the record developed at trial. Trial in this case was limited, at the district court's suggestion, to two days only, and the live testimony consisted solely of cross-examination—the parties were restricted to submitting direct testimony in written, narrative form. Given these constraints on proof, the United States should not be penalized for failing to present additional evidence of facts to which appellee had already stipulated.

29a. The Board's own redistricting consultant provided the Board members with precinct maps and instructed them that they "would have to work with the Police Jury to alter the precinct lines." *Id.* at 95a (¶ 89). Had the Board done so, its plan would have constituted neither a "violation[]" nor an "eva[sion]" (Bd. Br. 44) of state law, for it is undisputed that the Police Jury had the power to redraw precincts. J.S. App. 6a-7a, 72a. Although the Police Jury had rejected the Board's initial overture for joint *redistricting* (Bd. Br. 45)—an action readily explainable by the two bodies' divergent districting interests—appellee has presented no evidence that the Board would have refused to cooperate in altering *precinct* lines to accommodate whatever districts the Board drew.[9] Nor has appellee explained why the Board did not even approach the Police Jury to determine whether it would cooperate. The dictates of state law simply do not explain the Board's abrupt decision to adopt the Police Jury plan.

Nor can the Board's use of the Police Jury plan be explained by concerns regarding the cost of additional precincts. Contrary to appellee's contention (Bd. Br. 44-45), adopting a plan with two majority-black districts would not have required a significant increase in the number of precincts. Even if, as appellee now argues, adoption of such a plan would cut existing precinct lines in 65 places,[10] many areas cut out of those precincts could be

[9] Appellee suggests (Bd. Br. 45) that the Police Jury had no incentive to cooperate *after* the Attorney General's objection to the Board's plan, because doing so would have constituted an admission of the Police Jury's own liability. But the Police Jury's cooperation with the Board *at the time the Board redistricted* would have carried no such inference of admission.

[10] For this figure, appellee relies on Plaintiff's Exhibit 11, a table that was not the subject of testimony or other explanation below. On its face, however, the exhibit does not suggest that 65 new precincts

consolidated with each other or with existing precincts — an option that is permissible under Louisiana law. Def.-Int. Exh. G at 14. Throughout the redistricting process, the Police Jury anticipated consolidating precincts "as soon as practicable." J.S. App. 86a (¶ 61). Had the Board explored the possibility of precinct consolidation, it could have drawn a plan containing two majority-black districts with as few as 46 total precincts—3 precincts more than the 1990 total, and 10 precincts *fewer* than the Police Jury used in its 1991 redistricting plan. Def.-Int. Exh. G at 14-15. Such consolidations would have addressed any significant concern with increased costs.[11] The Board's failure even to examine the prospect of consolidation, and the Police Jury's own adoption of a redistricting plan that required the creation of 13 additional precincts, cast considerable doubt on appellee's asserted concern with electoral costs.

For similar reasons, appellee's suggestion (Bd. Br. 47-48) that the NAACP plan split three towns does not

would need to be created under the NAACP plan. The exhibit identifies 65 precinct "cuts," but 13 of those "cuts" contain no population, and many others contain very small population totals. The "cuts" therefore could readily have been remedied by consolidation with other precincts.

[11] Appellee does not mention the availability of *consolidating* precincts—a procedure that reduces the number of precincts by joining them together for all purposes and thus saves the election costs that additional precincts would entail. See J.A. 171. Appellee instead refers to the possibility of allowing *separate* precincts to share polling places (Bd. Br. 45 n.31)—a distinct process that may reduce some election costs but does not reduce the number of precincts. Compare J.S. App. 85a-86a (¶ 61) (noting that the Board's redistricting consultant, Gary Joiner, was aware that changes could be made "to consolidate some precincts and thus reduce administrative costs"); with *id.* at 86a (¶ 62) (noting that "it was also Joiner's understanding" that "costs could be reduced by placing the machines and poll workers of two precincts at one polling place").

explain the Board's abrupt decision, when faced with that plan, to abandon its search for alternatives and adopt the Police Jury plan. One of the three towns—Haughton—was wholly unaffected by either majority-black district in the NAACP plan. See Def.-Int. Exh. 7, Map 3. The Board could thus have readily drawn two majority-black districts without splitting that town had it attempted to do so.[12] Moreover, the Police Jury plan, which the Board rushed to adopt, divided well-established, predominantly black neighborhoods within Bossier City and along the boundaries of the town of Benton. J.A. 102-104. Appellee's articulated rationale of avoiding the splitting of municipalities is pretextual.

In sum, the strongest evidence demonstrating the Board's purpose is not the Board's failure to adopt the NAACP plan but rather its decision to adopt the Police Jury plan—a plan it had already rejected as inconsistent with its districting interests—in circumstances suggesting a discriminatory motivation. As Judge Kessler found below,

> [t]he common-sense understanding of these events leads to one conclusion: The Board adopted the Police Jury plan—two years before the next election—in direct response to the presentation of a plan that created majority-black districts. Faced with growing frustration of the black community at being excluded from the electoral process, the only way for the School Board to ensure that no majority-black districts would be created was to quickly adopt the Police Jury plan and put the issue to rest.

[12] The "Cooper 2" plan submitted by Defendant-Intervenors below included Haughton entirely within District 12. See Def.-Int. Exh. 25B.

J.S. App. 49a-50a. The district court's holding that appellee met its burden of proof,[13] notwithstanding this compelling evidence, was clear error.

3. We explained in our opening brief (Gov't Br. 33-44) that, when Section 2 was amended in 1982, Congress read this Court's decision in *Beer* v. *United States*, 425 U.S. 130 (1976), as requiring that electoral changes resulting in unlawful vote dilution not be precleared. In *Beer*, 425 U.S. at 141, the Court concluded that a nonretrogressive redistricting plan could not violate the "effect" prong of Section 5 "unless the new apportionment itself so discriminates on the basis of race or color as to violate the Constitution." In noting the possibility that "a legislative reapportionment could be a substantial improvement over its predecessor in terms of lessening racial discrimination, and yet nonetheless continue so to discriminate on the basis of race or color as to be unconstitutional," the Court cited, *inter alia*, the vote dilution cases culminating in *White* v. *Regester*, 412 U.S. 755 (1973). See *Beer*, 425 U.S. at 142-143 n.14. In the 1982 amendments, Congress reinstated what it understood to be *White*'s "results" test as the standard governing Section 2 claims. See *Gingles*, 478 U.S. at 43-44 & n.8.

Congress reasonably read the Court's decision in *Beer* to require the conclusion that changed voting systems violative of amended Section 2's "results" standard could not be precleared under Section 5—whether because a discriminatory "result" constituted a form of discrimi-

[13] A covered jurisdiction in a Section 5 declaratory judgment action has the burden of proving, *inter alia*, that its voting changes were not adopted for a discriminatory purpose. *Georgia* v. *United States*, 411 U.S. 526, 538 (1973). As a consequence, even if the evidence were in equipoise with respect to the question of discriminatory purpose, the district court would have been obligated to deny Section 5 preclearance.

natory "effect" under Section 5, or because the equitable remedy of preclearance could not be invoked in aid of a proven violation of anti-discrimination law. See Gov't Br. 34-35. The Senate Report made Congress's understanding on this point explicit by quoting *Beer*'s discussion and concluding that "[i]n light of the amendment to Section 2, it is intended that a Section 5 objection also follow if a new voting procedure itself so discriminates as to violate Section 2." S. Rep. No. 417, 97th Cong., 2d Sess. 12 n.31 (1982). The Attorney General's Procedures for the Administration of Section 5 incorporate Congress's understanding by requiring a denial of preclearance where "a bar to implementation of the change is necessary to prevent a clear violation of amended section 2." 28 C.F.R. 51.55(b)(2).[14]

The Senate Report makes clear that Congress viewed *Beer* as *already* incorporating a prohibition of unlawful vote dilution into Section 5. It is therefore simply irrelevant that, as appellee repeatedly observes (Bd. Br. 13, 14, 15, 22 & n.17), Congress did not alter the language of Section 5 itself in 1982 to provide expressly that a Section 2 "results" violation requires a denial of preclearance. Congress need not alter the language of a statutory

[14] Appellee contends (Bd. Br. 22-23 n.18) that this regulation is not entitled to deference. This Court, however, has accorded "particular deference" to the interpretations of the Voting Rights Act set forth in the Procedures for the Administration of Section 5. *Dougherty County Bd. of Educ.* v. *White*, 439 U.S. 32, 39 (1978); see *Georgia* v. *United States*, 411 U.S. 526, 536-539 (1973); see also *Morse* v. *Republican Party of Virginia*, 116 S. Ct. 1186, 1193-1197 (1996) (plurality opinion) (applying Attorney General's regulation relating to Section 5 coverage of political parties). Nor is the regulation—which interprets Section 5's prohibition on voting changes "hav[ing] the effect of denying or abridging the right to vote on account of race," 42 U.S.C. 1973c, to encompass changes that "result" in discriminatory vote dilution—unreasonable or contrary to the plain text of the statute. See generally *Chevron U.S.A. Inc.* v. *National Resources Defense Council, Inc.*, 467 U.S. 837 (1984).

provision when, as here, it agrees with a prior judicial gloss on that provision. To the contrary, "[w]hen a Congress that re-enacts a statute voices its approval of an administrative or other interpretation thereof, Congress is treated as having adopted that interpretation, and this Court is bound thereby." *United States* v. *Board of Comm'rs*, 435 U.S. 110, 134 (1978).[15]

Appellee incorrectly contends (Bd. Br. 20) that the *Beer* language quoted in the Senate Report "simply makes the obvious point that intentionally discriminatory action is prohibited by Section 5."[16] The *Beer* Court's discussion of a change that "itself so discriminates * * * as to violate the Constitution," *Beer*, 425 U.S. at 141, and its discussion of the ways in which a change might violate that standard, *id.* at 142-143 n.14, would have been a highly circuitous way of making the obvious point that Section 5's text prohibits changes with the "purpose" of denying or

[15] By contrast, the 1982 amendments did alter the text of the "bailout" provisions in Section 4(b) of the Act, 42 U.S.C. 1973b(b), to provide expressly that a covered jurisdiction could not exempt itself from Section 5's preclearance requirement unless it had eliminated "all voting procedures and methods of election which inhibit or dilute equal access to the electoral process." 42 U.S.C. 1973b(F)(i). This amendment was necessary because—unlike in the case of Section 5—prior interpretation of Section 4 did not allow bailout to be denied on the basis of unlawful vote dilution. S. Rep. No. 417, 97th Cong., 2d Sess. 43-45 (1982).

[16] Appellee also notes (Br. 20) that Justice Marshall, dissenting in *Beer*, vigorously argued that the *White* v. *Regester* standard should apply. But Justice Marshall—like Congress—read the majority opinion in *Beer* as ultimately holding that preclearance should be withheld where a change violates *White*'s "results" test. See *Beer*, 425 U.S. at 153-155.

abridging the right to vote.[17] Moreover, by noting that an ameliorative plan could "*continue so to discriminate* on the basis of race or color as to be unconstitutional," *id.* at 142 n.14 (emphasis added), the Court focused on the continuing *operation* of the redistricting plan, rather than on the discrete *intent* underlying its enactment. In light of that language, Congress reasonably concluded that *Beer* required that preclearance be denied where a change violated *White*'s "results" test. The Senate Report—the "authoritative source" for determining Congress's intent in enacting the 1982 amendments, *Gingles*, 478 U.S. at 43 n.7—makes clear that Congress read *Beer* in this way.

Nor would the result be different if Congress erred in interpreting the *Beer* decision; where Congress acts to codify its understanding of prevailing case law, that understanding is controlling for purposes of subsequent statutory construction. "Whether that understanding of Congress was in some ultimate sense incorrect is not what is important * * *. For the relevant inquiry is not whether Congress correctly perceived the then state of the law, but rather what its perception of the state of the law was." *Brown* v. *General Services Administration*, 425 U.S. 820, 828 (1976).

Appellee invokes the "rule of statutory construction that if Congress intends to alter the usual constitutional balance between States and the Federal Government, it must make its intention to do so unmistakably clear in the language of the statute." Bd. Br. 24 (quoting *Will* v. *Michigan Dep't of State Police*, 491 U.S. 58, 65 (1989) (internal quotation marks omitted)). The language of the Voting Rights Act, however, does make "unmistakably

[17] The question of discriminatory purpose was not at issue in *Beer* because the three-judge court had denied preclearance based solely on Section 5's "effect" prong. See *Beer*, 425 U.S. at 136 n.7.

clear" that it alters the "usual constitutional balance" by subjecting covered jurisdictions like Bossier Parish to the requirements of Section 5, and by requiring all States and political subdivisions to comply with Section 2. Because Bossier Parish is clearly subject to the restrictions of both Section 2 and Section 5, the denial of preclearance to one of its voting changes that violates Section 2 does not work any further alteration of the constitutional balance. Indeed, given the substantial overlap in the factors relevant to discriminatory purpose and the factors relevant to a Section 2 violation, much if not all of the evidence necessary to a Section 2 inquiry will necessarily be before the Section 5 court in any event. Compare *Gingles*, 478 U.S. at 43-51 (factors relevant to establishing Section 2 violation), with *Rogers*, 458 U.S. at 622-627 (factors relevant to establishing purposeful vote dilution). It would thus be quite anomalous if Congress intended to require preclearance even when a Section 2 violation is fully established in the Section 5 proceedings. See *Morse* v. *Republican Party of Virginia*, 116 S. Ct. 1186, 1201 (1996) (plurality opinion).[18]

---

[18] Appellee suggests (Bd. Br. 14, 19) that a three-judge district court lacks subject matter jurisdiction to consider Section 2 issues. Even if appellee were correct that a Section 2 claim may not form the basis for jurisdiction in the three-judge court, nothing in the statute prevents the court from considering the Section 2 results standard in the course of adjudicating a Section 5 action over which it concededly has jurisdiction. Moreover, appellee is incorrect. Jurisdiction to enforce Section 2 is provided by Section 12(f) of the Voting Rights Act, 42 U.S.C. 1973j(f), which vests subject matter jurisdiction in the "district courts of the United States," without limitation. Indeed, Section 2 challenges to statewide reapportionments *must* be brought in three-judge district courts. See 28 U.S.C. 2284(a). And this Court has affirmed the assertion of jurisdiction by the three-judge District Court for the District of Columbia to issue injunctions against the implementation of unprecleared voting changes—even though the same provision of

Finally, there is no merit to appellee's contention (Bd. Br. 10-13) that this Court's decisions in *Shaw II* and *Miller* held that a violation of Section 2 does not warrant the denial of preclearance. In each of those cases, the Attorney General's Section 5 objection was based solely on a claim of discriminatory purpose. See *Shaw II*, 116 S. Ct. at 1904; *Miller*, 115 S. Ct. at 2492. While the Court expressed "doubt that a showing of discriminatory effect under § 2, alone, could support a claim of discriminatory *purpose* under § 5," *Shaw II*, 116 S. Ct. at 1905 n.6 (emphasis added), the Court has never addressed the question whether a violation of amended Section 2 provides a ground for denying preclearance under the "effect" prong of Section 5, or as a bar to a Section 5 equitable remedy. See *City of Lockhart* v. *United States*, 460 U.S. 125, 133 n.9 (1983) (declining to address that question). Nor would denying preclearance on the basis of a Section 2 violation codify the "maximization policy" that this Court condemned in *Shaw II* and *Miller*. Cf. Bd. Br. 12. Section 2, by definition, does not require maximization. See *Johnson* v. *DeGrandy*, 114 S. Ct. 2647, 2660 (1994) ("Failure to maximize cannot be the measure of § 2."). Preclearance may not be denied under Section 2's "results" test unless the detailed preconditions for such a violation are established and, in the totality of the circumstances, it is shown that minority voters in the jurisdiction lack an equal opportunity to participate in the political process and to elect representatives of their choice. See 114 S. Ct. at 2654-2663.

Section 12 provides jurisdiction for such Section 5 enforcement actions, and even though *Allen* v. *State Bd. of Elections*, 393 U.S. 544, 560 (1969), held that such actions may be brought in the district in which the change is implemented. See *Texas* v. *United States*, No. 94-1529 (D.D.C. Sept. 27, 1994) (three-judge court), summarily aff'd, 115 S. Ct. 1397 (1995).

* * * * *

For the foregoing reasons and those stated in our opening brief, the judgment of the district court should be reversed and the case remanded for entry of a declaratory judgment that the redistricting plan at issue here is not entitled to preclearance under Section 5. In the alternative, the judgment should be reversed and the case remanded for further proceedings to consider, under proper legal standards, the evidence concerning discriminatory purpose and the plan's compliance with Section 2.

Respectfully submitted.

WALTER DELLINGER
Acting Solicitor General

OCTOBER 1996

Supreme Court, U.S.
FILED
OCT 21 1996

(12) (11)

Nos. 95-1455 & 95-1508

IN THE

Supreme Court of the United States

OCTOBER TERM, 1996

JANET RENO, ATTORNEY GENERAL OF THE UNITED STATES,
Appellant, and

GEORGE PRICE, *et al.*,
Appellants,

v.

BOSSIER PARISH SCHOOL BOARD,
Appellee.

**On Appeal from the
United States District Court
for the District of Columbia**

REPLY BRIEF OF APPELLANTS GEORGE PRICE, ET AL.

BARBARA R. ARNWINE
THOMAS J. HENDERSON
BRENDA WRIGHT
SAMUEL L. WALTERS

LAWYERS' COMMITTEE FOR
CIVIL RIGHTS UNDER LAW
1450 G Street, N.W., Suite 400
WASHINGTON, D.C. 20005
(202) 662-8322

WALTER A. SMITH, JR.
PATRICIA A. BRANNAN*
JOHN W. BORKOWSKI

HOGAN & HARTSON L.L.P.
555 Thirteenth Street, N.W.
Washington, D.C. 20004
(202) 637-8686

* Counsel of Record

*Counsel for Appellants
George Price, et al.*

24 pp

TABLE OF CONTENTS

	Page
TABLE OF AUTHORITIES	iii
INTRODUCTION	1
ARGUMENT	3
I. THE PURPOSE PRONG OF SECTION 5 IS DETERMINATIVE IN THIS CASE	3
II. BOSSIER HAS CONCEDED THE LEGAL STANDARDS THAT GOVERN THE SECTION 5 PURPOSE PRONG	4
III. THE MAJORITY BELOW PLAINLY DID NOT APPLY THE GOVERNING STANDARDS	5
IV. BECAUSE UNDER THE GOVERNING STANDARDS THE RECORD LEAVES NO DOUBT THAT DISCRIMINATORY PURPOSE MOTIVATED THE BOARD'S ACTION, THIS COURT SHOULD REVERSE	8
A. The Board Presented No Evidence of Any Non-Racial Reason to Reverse Itself and Adopt the Police Jury Plan	8
B. Board Members Admitted Bossier's Discriminatory Purpose	11

TABLE OF CONTENTS—Continued

	Page
C. The Board's Otherwise Unexplained Retreat to the Police Jury Plan Dilutes Minority Voting Strength	12
D. The School Board's Ongoing History of Discrimination Shows How and Why It Sought to Dilute Minority Voting Strength Through the Police Jury Plan	13
E. The Board's Plan Fails to Satisfy Its Own Redistricting Criteria	15
F. The Board's Alleged Concerns About the Illustrative Plans Are Purely Pretextual and Underscore Its Actual Discriminatory Purpose	17
CONCLUSION	20

TABLE OF AUTHORITIES

	Page
CASES:	
Bush v. Vera, 116 S. Ct. 1941 (1996)	15
City of Oklahoma City v. Tuttle, 471 U.S. 808 (1985)	6
Freeman v. Pitts, 503 U.S. 467 (1992)	14
Levin v. Mississippi River Fuel Corp., 386 U.S. 162 (1967)	8
Lucas v. South Carolina Coastal Council, 112 S. Ct. 2886 (1992)	6
Miller v. Johnson, 115 S. Ct. 2475 (1995)	5,10,15
Rogers v. Lodge, 458 U.S. 613 (1982)	15
Shaw v. Hunt, 116 S. Ct. 1894 (1996)	10,15
United States v. El Paso Natural Gas Co., 376 U.S. 651 (1964)	8
Village of Arlington Heights v. Metropolitan Housing Dev. Corp., 426 U.S. 252 (1977)	*passim*
STATUTES:	
Section 2 of the Voting Rights Act, 42 U.S.C. § 1973	*passim*
Section 5 of the Voting Rights Act, 42 U.S.C. § 1973c	*passim*

IN THE

Supreme Court of the United States

OCTOBER TERM, 1996

Nos. 95-1455 & 95-1508

JANET RENO, ATTORNEY GENERAL OF THE UNITED STATES,
Appellant, and
GEORGE PRICE, *et al.*,
Appellants,
v.
BOSSIER PARISH SCHOOL BOARD,
Appellee.

On Appeal from the United States District Court for the District of Columbia

---

REPLY BRIEF OF APPELLANTS GEORGE PRICE, ET AL.

INTRODUCTION

In its brief to this Court, the Bossier Parish School Board now concedes that: (1) *Village of Arlington Heights v. Metropolitan Housing Development Corp.*, 426 U.S. 252 (1977), sets the legal standard for determining whether the Board adopted the Police Jury plan in part for a discriminatory purpose, B.P. Br. 29, 33, 36, 49;[1] (2) if the plan was adopted in part for a

---

[1] In this brief, record citations conform to the abbreviations set forth in the Brief of Appellants George Price, *et al.*, at 1 n.1 (filed

discriminatory purpose, it violates Section 5 even though it may be nonretrogressive, *id.* at 10; and (3) in determining whether the plan was adopted in part for a discriminatory purpose, it would be "indefensible" for a court to ignore relevant evidence merely because that evidence would also be relevant to a Section 2 claim, *id.* at 31. Even though Bossier thereby acknowledges that appellants are right on the law with respect to the standards governing the "purpose" prong of Section 5, it does not and cannot show that it meets those standards. Instead, in its effort to defend the lower court's judgment, Bossier mischaracterizes the central issues before this Court, misstates the ruling of the majority below, and misrepresents the stipulated and unrebutted facts in the record.

For example, Bossier repeatedly mischaracterizes this case as one raising the question whether a governmental body unlawfully discriminates solely because it fails to *maximize* the number of majority-minority election districts. *See, e.g.*, B.P. Br. 6. In fact, the question is whether the Board adopted its plan in part to *minimize* the number of majority-minority districts and keep it at zero.

Likewise, this case does not ask this Court to choose between Bossier's plan and what it calls an "objectively inferior" maximizing alternative. *Id.* Instead, this case concerns the Board's refusal to consider *any* possible plan with even a single majority-minority district and its sudden adoption of a previously rejected and seriously flawed minimizing plan only when it was publicly confronted with the fact that majority-minority districts were a viable option.

August 1, 1996). Additional abbreviations are as follows: Brief of Appellee Bossier Parish ("B.P. Br."); Brief of Appellants George Price, *et al.* ("D-I Br."); and Jurisdictional Statement of Appellants George Price, *et al.* ("D-I J.S.").

In the end, the central question in this case is whether the Board met its burden to prove that its hasty reversal about the Police Jury plan was not motivated even in part by a discriminatory purpose. Applying the *Arlington Heights* standard—which all parties now acknowledge as controlling—to the stipulated and unrebutted facts, Section 5 preclearance should be denied because this "evidence demonstrates conclusively that the Bossier School Board acted with discriminatory purpose." App. 39a (Kessler, J., dissenting). Therefore, this Court should correct the majority's legal errors and reverse the decision below.

ARGUMENT

I. THE PURPOSE PRONG OF SECTION 5 IS DETERMINATIVE IN THIS CASE

Notwithstanding that Bossier spends the bulk of its brief arguing that a Section 2 violation should not be grounds for denying Section 5 preclearance, B.P. Br. 8-27, this Court need not reach that issue. This case has always been primarily a Section 5 discriminatory purpose case. The analysis of discriminatory purpose under *Arlington Heights* was the primary focus of all the briefing below. Indeed, the purpose evidence was so overwhelming that it was the *only* issue addressed in the Defendant-Intervenors' Post-Trial Brief.

All the parties agreed below, moreover, both that the court need not address Section 2 if Bossier "failed to meet its burden of proof on the issue of purpose" and, on the other hand, that it would make no sense to preclear a redistricting plan that violates Section 2. App. 144a (Stip. 257). We continue to support this position. *See* D-I Br. 43-45.

This Court, however, need not reach the Section 2 incorporation issue because the majority below failed to apply the proper legal standard to the evidence that

"demonstrates overwhelmingly" the Board's discriminatory purpose. App. 63a (Kessler, J., dissenting). Thus, if the Court agrees with us on the Section 5 purpose issue, the subsidiary Section 2 issue need not be decided. On the other hand, even if the Court decided the Section 2 incorporation issue against us, the discriminatory purpose issue would still have to be reached.

Furthermore, and contrary to Bossier's repeated contentions, addressing the purpose issue under *Arlington Heights* will not require this Court "indirectly" to decide the incorporation issue. B.P. Br. 6-7, 30-31. The overwhelming evidence of discriminatory purpose in this case does not hinge on the presence of a Section 2 violation or the Board's "failure to maximize." *Id.* at 7.

Instead, the evidence here—including direct admissions of discriminatory purpose, a discriminatory impact on minority voters, an ongoing history of discrimination, a failure to comply with stated redistricting criteria, and plainly pretextual *post hoc* rationalizations—unequivocally reveals that the Board adopted a previously rejected minimizing plan in direct response to the public debunking of its earlier claim that a majority-black district was impossible. Since Bossier adopted its plan in part for a discriminatory purpose, it should be denied preclearance, and the Board should be directed to develop a new plan free of such influences.

II. BOSSIER HAS CONCEDED THE LEGAL STANDARDS THAT GOVERN THE SECTION 5 PURPOSE PRONG

In its motion to dismiss this appeal, Bossier admitted that the majority below failed to apply *Arlington Heights* to the stipulated and unrebutted facts; Bossier argued then that a different legal standard should apply. Motion to Dismiss or Affirm at 11-12. Now, Bossier agrees that *Arlington Heights* applies. B.P. Br. 29, 33, 36, 49.

Indeed, our Jurisdictional Statement raised four questions regarding the legal standards applicable to the purpose prong of Section 5, D-I J.S. i., and Bossier now appears to agree with our position on all four. First, Bossier now *expressly* "agree[s] that courts - in Section 5 proceedings . . . should not exclude evidence probative of the legal question being resolved simply because it is also relevant to another legal issue." B.P. Br. 28. In fact, Bossier concedes that it is an "indefensible ruling that otherwise material evidence of purpose somehow should be excluded because it was also relevant to Section 2." *Id.* at 31. Second, Bossier acknowledges that this Court's decisions "in just the past two Terms" have confirmed that Section 5 preclearance must be denied even to an ameliorative plan, and certainly to a minimizing plan, if it is adopted with "an invidious purpose." *Id.* at 10 (citing *Miller v. Johnson,* 115 S. Ct. 2475 (1995)). Third, Bossier agrees that it bears the burden of proof under Section 5, *id.* at 8-9, implicitly acknowledging that the court itself should not provide its own arguments to meet that burden. Finally, in accepting *Arlington Heights* as the governing legal standard, Bossier also apparently acknowledges that if a discriminatory purpose was "a motivating factor" in its decision, preclearance should be denied. *Id.* at 29, 33, 36, 49; *Arlington Heights*, 465 U.S. at 265-66.

III. THE MAJORITY BELOW PLAINLY DID NOT APPLY THE GOVERNING STANDARDS

At the outset, we urge the Court to consider that in its motion to dismiss the Board *agreed* that the majority both refused to apply *Arlington Heights* and excluded from consideration all evidence relevant to Section 2. Motion to Dismiss or Affirm at i, 11-12. Now, however, Bossier has reversed course completely and contends that the majority *did* apply *Arlington Heights* and *did* consider certain Section 2 evidence, excluding only Section 2 evidence that would not be relevant to discriminatory purpose under Section 5. B.P. Br. 8, 27-39. A

party is not permitted to contradict itself in this fashion and raise for the first time in its responsive brief on the merits an argument it could have made in opposition to certiorari or in a motion to dismiss. *See Lucas v. South Carolina Coastal Council*, 112 S. Ct. 2886, 2897 n.9 (1992); *City of Oklahoma City v. Tuttle*, 471 U.S. 808, 815-16 (1985). Accordingly, the Court should not consider Bossier's new argument.

In any case, the argument is plainly without merit. To sustain its new view that the majority correctly applied *Arlington Heights* and considered all the relevant evidence, Bossier ignores both what the majority says it did as well as what it actually did. Relying now on a solitary footnote, Bossier claims that the majority's failure to apply *Arlington Heights* and its exclusion of "Section 2 evidence" were harmless, because it excluded from consideration solely that "evidence relevant *only* to the section 2 inquiry." B.P. Br. 27 (quoting App. 9a n.6) (emphasis added). Bossier, however, can cite no evidence introduced by appellants that is irrelevant to discriminatory purpose under *Arlington Heights*. Therefore, this footnote cannot save the majority's decision.

The text of the majority's opinion also makes clear that the majority considered any evidence that was relevant to Section 2 to be irrelevant to Section 5. In each of the three references in the text of the majority's opinion to its refusal to consider "section 2 evidence," the majority does not limit its discussion to evidence relevant "only" to Section 2. *See* D-I Br. 29 n.6 (quoting App. 23a-24a). Rather, the majority plainly and repeatedly explains that this evidence's relevance to Section 2 is *the reason* that it should not be considered in a Section 5 proceeding. App. 23a-24a. That is why the footnote relied on by Bossier must be read to mean that such evidence would not be considered under Section 5 because, in the majority's view, by definition it was "relevant only to the section 2 inquiry." *Id.* at 9a n.6. Moreover, when

Judge Kessler in dissent pointed out both the proper legal standard and the majority's refusal to apply it, App. 39a n.2, 42a n.4, the majority did not profess that it really was weighing *all* the evidence.

This reading of the majority's opinion is confirmed by what the majority actually did in excluding certain relevant evidence. It is also confirmed by Bossier's own laborious effort to demonstrate that the impact on minority voters of the Board's plan and Bossier's ongoing history of discrimination are insignificant in this case. B.P. Br. 3-5, 27-39. The majority's opinion, of course, says none of this, because the majority never considered such evidence.

For example, without citation to the majority's actual opinion, Bossier claims that "[t]he court assumed" that its plan negatively affected black voters' electoral opportunities but found that the Board adopted the plan "in spite of" that impact. *Id.* at 33. The majority did not say this and made no such assumption; not a sentence of the majority's opinion addresses the discriminatory impact of the Board's plan.

Bossier also suggests that the majority considered the Board's ongoing history of discrimination, but concluded that it was not particularly probative. B.P. Br. 36-38. Bossier again rests its claim principally on a single footnote taken out of context. *Id.* at 37 (citing App. 34a n.18). Even in this footnote, however, the majority stated that it did not "see how [Bossier's continuing willful failure to comply with school desegregation orders] can be in any way related to the School Board's purpose in adopting the Police Jury plan." App. 34a n.18. In contrast, Bossier itself now concedes that "'a series of official actions taken for invidious purposes'" is relevant to the question "whether this specific voting change was motivated by the same invidious purposes." B.P. Br. 36 (quoting *Arlington Heights*, 429 U.S. at 267). Moreover, the rest of the voluminous evidence of

discrimination in Bossier Parish and by the Board itself is never even mentioned by the majority. App. 42a n.4. (Kessler, J., dissenting).

In sum, it is implausible to conclude, as Bossier urges, that the majority silently applied *Arlington Heights* and actually considered the crucial "Section 2" evidence that it said it did not. Accordingly, the majority's resulting judgment is erroneous as a matter of law and should be set aside.

IV. BECAUSE UNDER THE GOVERNING STANDARDS THE RECORD LEAVES NO DOUBT THAT DISCRIMINATORY PURPOSE MOTIVATED THE BOARD'S ACTION, THIS COURT SHOULD REVERSE

Bossier's contention that this appeal is actually a "straightforward 'clearly erroneous' case," B.P. Br. 28, 39, is itself erroneous. The principal facts relevant to determining discriminatory purpose are not in dispute; they are stipulated and unrebutted. App. 66a-153a (Stip. 1-285); D-I Br. 5-23. The actual dispute here centers on the majority's legal errors in analyzing, and refusing to consider, the stipulated facts. Moreover, when analyzed under the governing legal standards, the actual facts of record permit only one conclusion: "racial purpose fueled the School Board's decision." App. 39a (Kessler, J., dissenting). For that reason, this Court should not merely vacate the majority's opinion; it should reverse and direct that preclearance be denied. *See United States v. El Paso Natural Gas Co.*, 376 U.S. 651, 657 (1964); *Levin v. Mississippi River Fuel Corp.*, 386 U.S. 162, 169-70 (1967).

A. The Board Presented No Evidence of Any Non-Racial Reason to Reverse Itself and Adopt the Police Jury Plan

Throughout its brief, Bossier mischaracterizes the issue in this case as whether the Board had any legiti-

mate reason for rejecting the NAACP plan; the real issue, however, is whether the Board had any discriminatory purpose in adopting the plan it *did* adopt. *See* D-I Br. 38-40.

The Board initially rejected the Police Jury plan on September 5, 1991. App. 47a (Kessler, J., dissenting). As the majority found:

> The School Board did not like the Police Jury plan when it was first presented to them [after it already had been precleared on July 29, 1991, App. 58a], and there were certainly reasons not to. The Police Jury plan wreaked havoc with the incumbencies of four of the School Board members and was not drawn with school locations in mind. [App. 28a.]

The ultimate question, therefore, is why did the Board reverse its decision, and more specifically, did a discriminatory purpose contribute to that reversal?

Bossier asks this Court to assume that the two reasons it adopted the Police Jury plan were those relied on by the majority: "guaranteed preclearance" and "precinct-splitting." B.P. Br. 6 (quoting App. 27a-28a). But Bossier offered no *evidence* that those reasons actually motivated its reversal of position on the plan. Nor is this surprising. Preclearance certainly was no more likely in 1992 than it had been in 1991 when the Board *rejected* the Police Jury plan. And, concerns about precinct-splitting are not a reason *to adopt* the Police Jury plan at all but, at most, a reason—albeit pretextual (*see infra* pp. 18-20)—*to reject* the NAACP plan.

Turning to the actual evidence of record, the Board offered no real explanation for its adoption of the Police Jury plan. The Board's minutes reveal no discussion at all of the merits of the plan or the reasons for adopting it, App. 55a n.11 (Kessler, J., dissenting); U.S. Exh. 7-36, and the majority found that at the Board's public hearing "[n]o one spoke in support of the plan." App.

8a. It also is undisputed that although the Board considered a number of different redistricting options, *id.* at 5a, it did not present a scintilla of evidence about its admittedly closed-door efforts to develop another plan. App. 47a (Kessler, J., dissenting); App. 97a (Stip. 96). Instead, the Board claimed that all of the other alternatives were inadvertently destroyed in a series of computer mishaps. J.A. 165-66.

This case, therefore, is unlike either *Miller*, in which "Georgia's Attorney General provided a detailed explanation for the State's initial decision" to adopt an ameliorative plan, 115 S. Ct. at 2492, or *Shaw v. Hunt*, 116 S. Ct. 1894 (1996) ("*Shaw II*"), in which North Carolina initially adopted an ameliorative plan after rejecting a number of other options for legitimate reasons. *Id.* at 1904. In contrast, Bossier presented *no* evidence of any race-neutral reason why its efforts to develop alternative plans were abruptly abandoned in favor of a previously rejected minimizing plan. Here, the record shows only that the Board resurrected the Police Jury plan in direct response to the public demonstration that it was possible to draw majority-black districts. App. 28a, 6a; App. 46a-50a (Kessler, J., dissenting); D-I Br. 14-21.

Bossier now tries to deflect attention from its unexplained reversal by contending that the issue is whether the Board was required to adopt the NAACP plan. B.P. Br. 40. No one has ever so claimed. App. 60a (Kessler, J., dissenting). Instead, as the majority found, the Board was asked to "consider alternative redistricting *plans*." App. 8a (emphasis added). Black voters specifically asked the Board only to use the NAACP plan "as a foundation" to develop a redistricting plan. App. 101a (Stip. 108). Indeed, George Price initially submitted to the Board only the basic demographic information showing that two majority-black districts could be drawn. App. 6a. The Board itself demanded that Price develop a full plan. *Id.* In the

end, therefore, the Board presented no evidence demonstrating a non-discriminatory explanation for its reversal.

B. Board Members Admitted Bossier's Discriminatory Purpose

On the other hand, several Board members actually admitted that the Board's sudden turnabout with respect to the Police Jury plan resulted from the fact that "school board members oppose [the] idea" of "black representation on the board." J.A. 93; App. 31a. The majority below improperly attempted to explain this evidence away, *see* D-I Br. 36-38, and Bossier now asks this Court to accept those explanations. B.P. Br. 50 n.35. The Court should not do so.

The Board member who made the admission quoted above, Henry Burns, did not testify, and as the majority noted, the Board did not "cross-examine . . . on this point." App. 31a. Thus, the statement stands undisputed. Another Board member, Barry Musgrove, also admitted that "other Board members were hostile to drawing majority-black districts." *Id.* at 32a. Mr. Musgrove did testify, and he did not deny "making this statement," as the majority suggests, *id.*, but said only that he did not "recall" it. Tr. I at 56. Finally, Board member Thomas Myrick, whose denial of his involvement in the Police Jury redistricting process the majority rejected as false, *see* D-I J.S. 28 n.9; D-I Br. 11-12 n.3, told the Board's redistricting consultant that he wanted to avoid the creation of a majority-black district, J.A. 163-64, and told black voters that he would not "let [them] take his seat." App. 6a n.4.

Because these statements are direct evidence of the Board's intent, and because Bossier cannot refute them, it attempts instead to avoid them. Although it made no objection below, Bossier now implies that all of these statements are hearsay, B.P. Br. 50 n.35, but, as admissions of a party, they are not. Bossier also now

claims that the statements were only "allegedly" made, *id.*, but it presented no evidence below to raise doubt that they were said. Finally, Bossier claims that these statements are not probative of discriminatory purpose without "the most nefarious possible spin," *id.*, but this clearly is not so. We ask only that the Court accept these statements at face value and view them in the context of the stipulated facts ignored by the majority below.

C. The Board's Otherwise Unexplained Retreat to the Police Jury Plan Dilutes Minority Voting Strength

The majority below erred in refusing to consider the undisputed evidence that the effect of maintaining twelve-of-twelve majority-white districts would be to dilute the ability of minority voters to elect candidates of their choice. D-I Br. 29-33. Bossier now attempts to defend this refusal by falsely contending that the Police Jury plan "enhanced minority voting strength," B.P. Br. 40, and that Bossier Parish is not characterized by racially polarized voting, *id.* at 3-5. However, the record unequivocally shows that: (1) when compared to the Board's 1980s plan the Police Jury plan actually reduces the minority voting-age percentage in the three districts with the highest minority concentrations, *compare* J.A. 47 *with* J.A. 44; and (2) voting in Bossier Parish plainly is racially polarized.

First, no black candidate had ever been elected to the Board. App. 67a (Stip. 4). Second, in the four Board elections since 1980 that involved a contest between a black and white candidate, the black candidate lost every time. *Id.* at 115a (Stip. 153). Third, the *only* expert analysis of election statistics for Bossier Parish concluded that "African American voters are likely to have a realistic opportunity to elect candidates of their choice to the . . . Board only in districts in which they constitute a majority of the voting age population." J.A. 121. The elections in which Bossier now claims that

Dr. Engstrom did not find racial polarization using regression analysis and extreme-case analysis, B.P. Br. 3-4, are simply elections in which the underlying data are insufficient to permit a full application of these statistical techniques. J.A. 111-21. The partial analyses of these elections that Engstrom was able to perform, moreover, support the above-quoted conclusion of racially polarized voting. *Id.*

Moreover, the majority found that the area surrounding Barksdale Air Force Base in which a few black candidates for other offices in recent times have been successful in elections with white opponents is "unique." App. 2a n.1; App. 117a-18a (Stip. 162-63). All but two of the six elections cited by the Board in which a black candidate was successful against a white opponent involved this "unique" community. The other two involved an at-large election system in Haughton, and because these elections allowed for single-shot voting the election of black candidates shows nothing about racial polarization. App. 120a (Stip. 174). Moreover, while Bossier refers to only 14 black-white contests, 17 actually meet its arbitrary limiting criteria; the parties stipulated to facts concerning more than 20 such elections, *id.* at 115a-27a (Stip. 153-96); and the record includes undisputed results from more than 30. J.A. 55-60. In *all* of these other contests, black candidates lost to whites. *Id.*

Accordingly, Bossier is wrong to say that Board elections are not racially polarized, and the majority was wrong in refusing to consider that polarization in assessing the Board's motivation.

D. The School Board's Ongoing History of Discrimination Shows How and Why It Sought to Dilute Minority Voting Strength Through the Police Jury Plan

With respect to the Board's history of discrimination, the "facts" Bossier relies upon again simply cannot be

found in this record. While the Board now claims without support that unidentified "demographic factors" have caused increasing segregation in its schools, B.P. Br. 38-39 n.27, the evidence shows that the Board's own actions have contributed to it. Bossier itself submitted evidence showing that its transfer policy may have contributed to the growing racial imbalance in its schools. Pl. Exh. 14 at 4. The superintendent also admitted that the Board intentionally assigned a widely disproportionate number of minority teachers to predominantly black schools. J.A. 179. This is indisputably contrary to the Board's court-ordered obligations, App. 45a (Kessler, J., dissenting), and is a recognized method of unconstitutionally designating some schools as "black" schools and others as "white." *See Freeman v. Pitts*, 503 U.S. 467, 497 (1992). Finally, not only has the Board failed to achieve a unitary school system, but Board members admittedly were completely ignorant of their court-ordered desegregation obligations. *See, e.g.*, J.A. 74, 148.

In addition, while Bossier now blames its failure to maintain the court-mandated bi-racial committee on the waning "interest of volunteer citizens," B.P. Br. 38 n.27, there is no evidence to support this; instead, the record shows that for more than 20 years the Board reported to the federal court that the actually nonexistent bi-racial committee was "available." U.S. Exh. 84YY; J.A. 134. When the Board finally established a committee in 1993, Board members quickly terminated it for the same reason they adopted the Police Jury plan: they did not want blacks involved in "policy" questions. D-I Br. 9; App. 104a-06a (Stip. 114-17).

As noted, the majority below failed even to address the rest of the voluminous stipulated evidence of discrimination in Bossier Parish, and Bossier now seeks to defend this error by claiming incorrectly that this evidence "says nothing about *why* a black majority district was *not created*." B.P. Br. 35. Plainly it does. We do not

argue, however, as Bossier suggests, that evidence of non-Board discrimination in Bossier Parish is relevant because the Board is responsible for "private citizens' voting patterns" and all "historical discrimination," *id.* at 39. Rather, such evidence is probative because the Board's knowledge of the preferences of private citizens and the patterns of local history—like its awareness of racially polarized voting—made clear to the Board that the way to keep black voters out of "policy" questions was to adopt an election plan with all majority-white districts. App. 42a-46a (Kessler, J., dissenting). *See Rogers v. Lodge*, 458 U.S. 613, 618, 625 (1982).

E. The Board's Plan Fails to Satisfy Its Own Redistricting Criteria

To counter the foregoing showing of discriminatory purpose, Bossier now relies most heavily on the proposition that the Police Jury plan could not be discriminatory because it complies with the Board's traditional redistricting principles. *See* B.P. Br. 6-8, 40-41, 47-50. Not only is this assertion contradicted by the stipulated and unrebutted facts, but it also ignores the governing legal standard.

Bossier argues that this Court has accepted adherence to a "traditional redistricting principle *as a refutation of any discriminatory purpose finding*." B.P. Br. 47 (emphasis added). To the contrary, the Court carefully scrutinized legislative motives in *Miller*, *Shaw II* and *Bush v. Vera*, 116 S. Ct. 1941 (1996), and, in *Vera*, explicitly refused to accept adherence to a traditional redistricting criterion as a defense even to the allegation that race was *the predominant* factor in a decision, let alone *a contributing* factor, *id.* at 1951-52. While a showing that traditional redistricting principles were not subordinated to race may defeat the "analytically distinct" claim of racial gerrymandering, *Miller*, 115 S. Ct. at 2488, 2485, this Court has never suggested that a political body may intentionally dilute minority voting strength so long as its plan for doing so is

compact, contiguous or respects political subdivisions. Such a perverse rule would subordinate the Constitution to "traditional redistricting principles."

Of course, if the Board had *shown* that the reason it reversed course and adopted the Police Jury plan was to comply with traditional districting principles, this would be a different case. But here the record shows that Bossier's plan does *not* comply with its own criteria. Indeed, while the majority understandably made no finding at all on this subject, Judge Kessler found that the plan "plainly violates a whole number of redistricting principles." App. 51a.

For example, Bossier claims without support that the Police Jury plan "clearly complied with state law," B.P. Br. 40, but the undisputed evidence shows that the Police Jury plan violated state law in at least two respects: by including a district that is not contiguous and by exceeding the maximum allowable deviation from one person, one vote. App. 84a (Stip. 58); D-I Exh. G ¶¶ 31, 32.

The Board also claims without support that the Police Jury plan was compact. B.P. Br. 40. To the contrary, the stipulated facts demonstrate: (1) that the Board's cartographer, Gary Joiner, admitted that one-third of its districts were not compact, App. 111a-12a (Stip. 139); and (2) that one district "contained almost half of the geographic area of the Parish." App. 50a (Kessler, J., dissenting); App. 112a (Stip. 140).

Likewise, Joiner's own testimony defeats Bossier's claim that there is no showing that the Police Jury plan "'fragments' any concentration of minority voters." B.P. Br. 41. In fact, Joiner admitted that the plan appears to "fracture" the predominately black neighborhood surrounding two predominantly black elementary schools. App. 111a-13a (Stip. 137, 138, 142).

Bossier also claims without support that the Police Jury plan maintained the "integrity of municipal" boundaries "like all prior redistricting plans," B.P. Br. at 40, 2, but the record shows: (1) no information about any plan prior to 1980; (2) no indication that the Board ever considered municipal boundaries in redistricting; and (3) several stipulations that the Board was concerned instead about the location of schools in its districts, App. 72a-73a (Stip. 24), and the protection of incumbencies, App. 28a; App. 50a, and that the Police Jury plan violates these criteria. App. 112a (Stip. 141); App. 28a; App. 50a (Kessler, J., dissenting).

Finally, Bossier claims that its plan "respect[s] . . . the Police Jury districts," B.P. Br. 2, but the pertinent evidence in the record is the stipulated fact that "[t]hroughout the 1980s, the Police Jury and School Board maintained different electoral districts." App. 4a n.3.

F. The Board's Alleged Concerns About the Illustrative Plans Are Purely Pretextual and Underscore Its Actual Discriminatory Purpose

Just as the majority below found that "the School Board . . . offered several reasons for its adoption of the Police Jury plan that *clearly were not real reasons*," App. 27a n.15 (emphasis added), Bossier's current assertions questioning plans with majority-black districts are clearly pretextual.

The Board claims that the "black majority districts . . . were plainly not compact," B.P. Br. 40, but the record shows (1) stipulations that the Bossier City district was "an acceptable configuration from the standpoint of district shape," App. 115a (Stip. 150), and that it was "obvious that a reasonably compact black-majority district could be drawn within Bossier City," *id.* at 76a (Stip. 36), where "more than 50 percent of the black population of Bossier Parish is concentrated," *id.* at 68a (Stip. 10); and (2) an illustrative majority-black district

in the northern part of Bossier Parish that is no more irregularly shaped than any number of districts in the Board's 1980s plan and the current Police Jury plan. *See* J.A. 42-43, 45-46, 51-52.

Bossier also now claims that the NAACP plan "split every municipal boundary in the Parish," but the record contains a stipulation that "[o]verall, in the use of logical, traditional features . . . the NAACP Plan is not significantly different from the School Board plan." App. 113a (Stip. 144).

The Board claims as well that William Cooper drew the NAACP plan "for the exclusive purpose of 'creat[ing] two majority-black districts.'" B.P. Br. 2 (quoting J.A. 260). But the intent of the drawers of the various illustrative plans is irrelevant to the *Board's* intent in adopting the Police Jury plan. Moreover, the record shows that (1) the NAACP plan (which Cooper actually did not draw, App. 98a (Stip. 98)) was meant only as an illustration for the Board's information and was not intended to "create" any districts at all, *see* D-I Br. 16-17; and (2) as Cooper explained in the very testimony relied on by Bossier, his own subsequent illustrative plan was drawn to "assess whether or not it was possible to create two majority black districts *using traditional redistricting criteria*." J.A. 260 (emphasis added).

Bossier rests the bulk of its argument on the claim that the NAACP plan "facially violated" state law because it split precincts. B.P. Br. 43, 44. The record, however, shows that (1) no one suggested that the Board split precincts but that it consider working with the Police Jury to establish new ones, App. 156a-57a; J.A. 136-43; (2) the Board was well aware that it could work with the Police Jury to have precincts modified, App. 6a-7a, 29a; App. 99a-100a (Stip. 102); and (3) this procedure is commonplace in Louisiana, App. 72a (Stip. 22-23); J.A. 137-38.

The Board's elevation of precincts to the essential "building blocks" of Louisiana election districts is simply false. B.P. Br. 43. While Bossier claims that the precincts were "used by the Police Jury for its districts," *id.*, the record is clear that the Police Jury first drew its new election districts and *then* had to create a new system of precincts, with at least 13 new ones. App. 85a, 88a, 82a-88a (Stip. 60, 70, 52-68). The parties also stipulated that "Bossier Parish has made a number of . . . precinct realignments in the last ten years," *id.* at 77a (Stip. 38), and Bossier's own evidence confirms that the Police Jury changed precincts in 1987, 1989 and 1991, Pl. Exh. 1, and intended to consolidate precincts again in 1993. App. 85a-86a (Stip. 61).

While Bossier claims, with no record support, that it has a "longstanding, uniform practice of preserving Police Jury precincts," B.P. Br. 47, the state statute requiring the use of whole precincts by school boards did not even apply to any prior redistricting. J.A. 265-66. After the 1980 census, for example, Louisiana law provided that "school board election districts . . . *need not . . . have any relation* to, the . . . precincts that may be created by the police jury." *Id.* at 263 (emphasis added). Bossier also claims that it was "required to use [the] existing 1991 precincts," B.P. Br. 2, but, even under the new statute, the whole-precinct requirement did not apply where "the number of members of the school board is not equal to the number of" police jurors, J.A. 266, and a plan with five, seven or nine members, rather than 12, was one of the options that the Board originally considered but then abandoned without explanation. Tr. I at 44.

Most importantly, while Bossier now implies it was "powerless" to develop a plan that did not employ all of the Police Jury's precincts, B.P. Br. 43, the majority below found that the Board was "free to request precinct changes from the Police Jury," App. 7a, and it is undis-

puted that the Board knew it could "work with the Police Jury to alter the precinct lines." App. 95a (Stip. 89). It also is undisputed that through such cooperation the Police Jury could *reduce* its total precincts from 56 to 46 without changing its own election districts at all and still accommodate a School Board plan with two majority-black districts. D-I Exh. G ¶ 36. Nevertheless, the Board never even approached the Police Jury about modifying precincts. App. 7a. As a result, its alleged concern over precinct-splitting must be treated as pretextual, particularly in the face of the overwhelming evidence showing that the abrupt, belated adoption of the Police Jury plan was at least in part racially motivated.

CONCLUSION

When *all* the stipulated and unrebutted evidence is fairly considered under the governing standards, it is "far from being equally convincing on either side. Not only does the evidence fail to prove absence of discriminatory purpose, it shows that racial purpose fueled the School Board's decision." App. 38a-39a (Kessler, J., dissenting). This Court, therefore, should reverse.

Respectfully submitted,

BARBARA R. ARNWINE
THOMAS J. HENDERSON
BRENDA WRIGHT
SAMUEL L. WALTERS

LAWYERS' COMMITTEE FOR
CIVIL RIGHTS UNDER LAW
1450 G Street, N.W., Suite 400
WASHINGTON, D.C. 20005
(202) 662-8322

* Counsel of Record

WALTER A. SMITH, JR.
PATRICIA A. BRANNAN*
JOHN W. BORKOWSKI

HOGAN & HARTSON L.L.P.
555 Thirteenth Street, N.W.
Washington, D.C. 20004
(202) 637-8686

Counsel for Appellants
George Price, et al.